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S O C I E T Y I N E U R O P E.



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S O C I E T Y I N E U R O P E,
I N I T S P R O G R E S S F R O M R U D E N E S S
T O R E F I N E M E N T:
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I N Q U I R I E S
C O N C E R N I N G
T H E H I S T O R Y O F
L a w, G o v e r n m e n t, a n d M a n n e r s.

B Y G I L B E R T S T U A R T, L L. D.

Quae priscis memorata Catonibus atque Cethegis,
Nunc situs informis premit, et deserta vetitas. HOR.

E D I N B U R G H:

Printed for J O H N B E L L;

J. M U R R A Y London.

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M,DCC,LXXVIII.

A D V E R T I S E M E N T.

IT is usual to treat law, manners, and government, as if they had no connection with history, or with each other. Law and manners are commonly understood to be nothing more than collections of ordinances and matters of fact ; and government is too often a foundation for mere speculation and metaphysical refinements. Yet law is only a science, when observed in its spirit and history ; government cannot be comprehended but by attending to the minute steps of its rise and progression ; and the systems of manners, which characterise man in all the periods of society which pass from rudeness to civility, cannot be displayed without the discrimination of these different situations. It is in the records of history, in the scene of real life, not in the conceits and the abstractions of fancy and philosophy, that human nature is to be studied.

But, while it is in the historical manner that laws, customs, and government, are to be inquired into, it is obvious, that their dependence and connection are close and intimate. They all tend to the same point, and to the illustration of one another. It is from the consideration of them all, and in their union, that we are to explain the complicated forms of civil society, and the wisdom and accident which mingle in human affairs.

After

After this method, I have endeavoured to investigate my subject. The topics I canvass in the following sheets, are various, and constitute a difficult and important branch of my undertaking. If I am so fortunate as to obtain the sanction of the public approbation, I shall proceed to fill up the picture I have begun, and consider, in future publications, civil jurisdiction, nobility, constitutional law, and cultivated manners.

The foundations of a work like this I have attempted, must be laws of barbarous ages, antient records, and charters. These I could not incorporate, with propriety, in my narrative. This instructive, but tasteless erudition, did not accord with the tenor of a portion of my performance, which I wished to address to men of elegance, as well as to the learned. It consisted, however, with the simpler and the colder style of dissertation. My proofs, accordingly, appear by themselves ; and, in consequence of this arrangement, I might engage in incidental discussions ; I might catch many rays of light that faintly glimmer in obscure times ; and, I might defend the novelty of my opinions, when I ventured to oppose established tenets, and authors of reputation.

Though I have employed much thought and assiduity to give a value to these papers, yet I communicate them to the public with the greatest diffidence. My materials were buried in the midst of rubbish, were detached, and unequal. I had to dig them

them up anxiously, and with patience; and, when discovered and collected, it was still more difficult to digest and to fashion them. I had to struggle with the darkness and imperfection of time and of barbarity. And, from the most able historians of our own and foreign nations, who might naturally be expected to be intelligent guides for the paths I have chosen, I could derive no advantage. They generally prefer what is brilliant to what is useful; and they neglect all disquisitions into laws and into manners, that they may describe and embellish the politics of princes, and the fortunes of nations, the splendid qualities of eminent men, and the lustre of heroic action.

EDINBURGH, January 3
1778.

C O N-



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I N I T S P R O G R E S S F R O M R U D E N E S S

T O R E F I N E M E N T.

B O O K I.

C H A P T E R I.

Of the **G**ERMANs before they left their Woods.

S E C T I O N I.

The Institutions, Government, and Character of the Germanic Tribes.

IT is of little moment to inquire into the origin of the ancient Germans. Their manners and government are subjects more interesting, and concerning which there are memorials of great curiosity and importance. The picture of these nations has been drawn by Tacitus ; and the affairs of men ne-

ver found an observer more accurate and penetrating. In following such a guide, it is impossible not to convey information; and, on this subject, no modern has a title to speculate, who has not paid a most minute attention to his treatise. Antiquity has not given to the kingdoms of Europe a present more valuable.

The leading circumstance in discriminating the manners of barbarous and refined times, is the difference which exists between them in the knowledge and the management of property. The want of commerce, and the ignorance of money, permit the barbarian to exercise a generosity of conduct, which the progress of the arts is to destroy. The Germans conceived not that their descendants were to grow illustrious by acquisitions of land, and that they were to employ the metals as a source of influence. Land was yet more connected with the nation than the individual. The territory possessed by tribes was considered as their property, and cultivated for their use. The produce belonged to the public; and the magistrate, in his distributions of it, paid attention to the virtue and the merits of the receiver (1).

The German, accordingly, being unacquainted with particular professions, and with mercenary pursuits, was animated with high sentiments of pride and greatness. He was guided by affection and appetite; and, though fierce in the field, and terrible to an enemy, was gentle in his domestic capacity, and found

a pleasure in acts of beneficence, magnanimity, and friendship.

A state of equality, in the absence of the distinctions of property, characterised the individuals of a German tribe, and was the source of their pride, independence, and courage. Personal qualities were alone the foundation of pre-eminence. The sons of a chief were not distinguished from those of the simple warrior, by any superior advantages of education. They lived among the same cattle, and reposèd on the same ground, till the promise of worth, the symptoms of greatness, separated the ingenuous from the vulgar, till valour claimed them (2). Ignorant of the arts of peace, they pursued, with keenness, the occupations of war. Where communities, perpetually inflamed with rivalship and animosity, brought their disputes to the decision of battles, and were agitated with revenge and with glory, the opportunities of distinction were frequent. The only profession known to the Germans was that of arms. The ambitious and enterprising courted dangers where they might acquire renown, and display their conduct and their prowess. To such a height did the military ardour prevail, that, if a tribe happened at any time to languish in ease, its youthful and impatient heroes sought those nations who were then at war. They disdained to remain in inaction ; and could not so easily be persuaded to till the earth, and to wait its returns, as to challenge an enemy, and to hazard their lives. They thought it mean and ignoble to ac-

quire by their labour, what they might purchase with their blood (3).

The animated temperament they displayed in war, was also apparent in their private concerns. To the chase they addicted themselves with no measure of moderation. And, in parties at dice, they engaged in their soberest and most serious hours, and with such hope or temerity, that they risked their liberty and persons on the last throw. The affection with which they embraced their friends was ardent and generous. To adopt the resentments, as well as the amities of their relations and kindred, was a duty which they held indispensable (4). In hospitality they indulged with the most unbounded freedom. The entertainer, when exhausted, carried his guest to the house of his next neighbour. Invitations were not waited for ; nor was it of consequence to be invited. A reception, equally warm and hearty, was, at all times, certain. On these occasions, giving way to the movements of the heart, they delighted in presents ; but they neither thought themselves entitled to a return for what they gave, nor laid under an obligation by what they received (5). They yielded to the impulse of passion, and the pleasure they felt was their recompense. Their gifts were directed by no view of an immediate or distant advantage ; their generosity was no traffic of interest, and proceeded from no motive of design.

But,

But, amidst all this ardour, they were averse from labour. The women and the infirm discharged the offices of the house. The warriour did not submit to any domestic occupation. He was to bask whole days by the fire ; and a sloth, joyless and supine, was to succeed and to relieve the brisknes and fatigue of action (6). His admiration of fortitude, which was the cause of this indolence, and this contempt of drudgery, was at the same time to produce a stateliness in his behaviour. He was not to lose his virtue, or to weaken the vigour of his mind, in the practice of mechanic or unworthy pursuits. When he walked, he seemed conscious of importance ; he cast his eyes to the ground, and looked not around him for the objects of a vain and frivolous curiosity.

In the diet of these nations, there was much simplicity ; it consisted of wild apples, new-killed venison, and curdled milk. They expelled hunger without ostentation, or any studied preparations of food ; but, in satisfying thirst, they were less temperate. When supplied to their desire in intoxicating liquors, they were no less invincible in vice than in valour (7). Yet, in the disgraceful moments of debauch, they applied to public affairs, and debated concerning peace and war ; and, in the heat of their disputation and riot, the dagger was often to deform with blood the meetings of friendship and of business. In these seasons, they imagined that their minds were disposed to conceive honest sentiments, and to rise into noble ones. But, in

an after-period, the undissembled thoughts of every one were diligently canvassed ; a proper attention being paid to the time when they were first delivered, and to the purpose which then employed them. It was their meaning to deliberate when they could not deceive, and to form resolutions when they could not err (8).

'They did not live in towns, and could not endure to have their houses contiguous. They built as they found a spot to their fancy, as they were attracted by a fountain, a plain, or a grove. But, being unacquainted with a private property in land, they were not ambitious of possessions. They vied not in the extent or the fertility of their grounds, in the rearing of orchards, and in the inclosing of meadows. Corn was the only produce they required from the earth ; and they divided not the year into proper seasons. They understood, and had names for winter, spring, and summer, but had no idea of the term, and little knowledge of the fruits of autumn (9).

In their religion they were gross, like almost all nations, whether savage or cultivated. They believed in a plurality of gods ; but thought it derogatory from their majesty to shut them up within walls, or to fashion them in resemblance to any human form. Their groves were appropriated to the uses of devotion ; and, in the awful respect inspired by silence in the deep recesses of their woods, they felt and acknowledged the power of their deities.

deities. To augury and divination they were much addicted ; and they were fond to draw prognostics and intimation from the running of water, the flight of birds, and the neighing of horses. Their priests had greater authority than their kings or chieftains ; for it was not by any principle of expediency or reason that their actions and conduct were to be ascertained and examined. They were governed by the impulses and dictates of their divinities ; and, being the interpreters of the will and intentions of these, they were able to exercise a jurisdiction uncontrollable and sacred (10).

The office of a magistrate was known and respected among these nations. The prince, or the chieftain of a district, with the body of his retainers or followers, constituted a court, which heard accusations, and determined concerning crimes. Traitors and deserters were hanged on trees. Cowardice, and the crime against nature, were considered as of equal atrocity ; and the persons convicted of them were choked in mire and swamps by the pressure of hurdles. A corporal punishment, and compensations in corn or cattle, were the atonements of lesser delinquencies (11).

Noble birth, but more frequently the possession of superior qualities, entitled to the office and jurisdiction of a chief : And the general of an army was to command less by authority than from example. He drew respect and observation by his activity, his address, and the splendour of his exploits (12). Even

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the hopes and ambition of the simple warriour were made to depend on his personal honour and courage. Yet, with all this attention to merit, and with all their elevation of character, they were prone to deceive and to circumvent. They accounted it meritorious to steal upon their enemies in the darkest nights ; they blackened their shields, and painted their bodies, to be terrible ; and, to give ground, but immediately to return to the charge, was a common and an admired feat of their prudence. Cunning and stratagem appeared to them to be wisdom ; and, though remarkable for courage, both active and passive, they exposed it to suspicion by the arts which, in a cultivated age, are characteristic of the pusillanimous (13).

It is also remarkable, that, though attentive to justice, with a punctilious exactness, within the bounds of their particular nations, they despised it with regard to other states and communities. Beyond the frontier of his tribe, the German was a thief and a robber. While, in the one instance, his theft or depredation was a crime of the deepest dye, and punished with death, it was, in the other, a mark of valour, and an expression of virtue. To make incursions against a neighbouring people, though at peace ; to carry off their cattle, and to lay waste their territory, were actions of renown and greatness. They roused the ambition of the valorous, and were occupations in which they acquired reputation, and prepared themselves for scenes of greater danger and glory (14).

But,

But, the circumstance in the customs of these nations the most valuable, and which, like all their more remarkable features, arose from their unacquaintance with property, was the passion they entertained for independence and liberty. Every person who was free, considered himself in the light of a legislator. The people prescribed the regulations they were to obey. They marched to the national assembly to judge, to reform, and to punish ; and the magistrate and the sovereign, instead of controlling their power, were to respect and to submit to it. Stated or regular terms were appointed for the convention of their public council ; and a freedom of speech, entire and unlimited, was permitted. His age, his eloquence, his rank, and the honour he had acquired in war, were the qualities which procured attention to the speaker ; and the people were influenced by persuasion, not by authority. A murmur coarse, and often rude, expressed their dissent : The rattling of their armour was the flattering mark of their applause (15).

While these institutions and manners are expressive, in general, of the German communities, there are exceptions which it is not my province to explain. In the enumeration which is made by the Roman historian of the Germanic tribes, there are perceptible unequal degrees of civilization and refinement. The Chauci, for example, were an improved and an illustrious nation, and supported their greatness by their probity. They were lovers of peace and quiet, and contemners of avarice and ambition.

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They provoked no wars; engaged in no incursions or robberies; and, what may be considered as a certain proof of their power and valour, preserved their superiority, without having recourse to injuries and oppressions. When called upon, however, by the exigency of their affairs, they were not slow to take arms and to levy armies. They inhabited an extensive territory, were rich in men and in horses, and in peace and in war maintained their reputation. The picture of the Fenni, on the contrary, is that of mere rudeness. They had no arms, no horses, no religion. To the most savage fierceness, they had joined the most abject poverty. They clothed themselves in the skins of beasts, fed, at times, on herbage, and slept on the earth. Their chief dependence was on their arrows; and, having no iron, they pointed them with bones. The women accompanied the men to the chase, and demanded a share of the prey. A covering, inwrought with boughs, was all the shelter which defended their infants from the rigour of seasons, and the ferocity of animals. To this miserable dwelling their young men returned; and here their old men found a refuge. These courses of barbarousness, this melancholy sadness, they preferred to the fatigue of cultivating the earth, and of building houses, to the agitations of hope and fear attendant on a care of their own fortunes, and on a connection with those of others. Unapprehensive of any danger from men, and awed by no terror of the gods, they had reached a state which is nearly unattainable to all human endeavours—the being entirely without a wish (16).

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The majority of the tribes or communities of Germany may be said to have occupied a middle state between the cultivation of the Chauci and the savageness of the Fenni. And it is sufficient to have selected and expressed the more general and the more distinguished particulars which regard their institutions, government, and character. With these in my view, I proceed to describe the condition of their women ; a subject which, though little attended to by the learned, may lead to conclusions of interest and curiosity.

S E C T I O N II.

An Idea of the German Women.

IT has been asserted, that men, in savage and barbarous periods, are carried to the sex merely from the incitement of animal gratification, and that they feel not the power of beauty, nor the pleasures which arise from love; and a multitude of facts have been produced from history to confirm this theory. It is concluded, of consequence, that, in such times, women are in an abject state of servility, from which they advance not till the ages of property (1).

One would fancy it, notwithstanding, consistent with reason, to imagine, that the sexes, in every period of society, are important to each other; and that the member of a rude community, as well as the polished citizen, is susceptible of tenderness and sentiment. He is a stranger, indeed, to the metaphysic of love, and to the fopperies of gallantry; but his heart cannot be insensible to female attractions. He cannot but be drawn by beauty;

beauty ; he must know a preference in the objects of his affection ; and he must feel and experience, in a certain degree, at least, that bewitching intercourse, and those delightful agitations, which constitute the greatest charm of cultivated life.

This opinion, I conceive, is strongly confirmed by the history of the Germanic states. Their general character, with particular and obvious facts, illustrate the importance and the consideration in which they held their women.

Even in the age of Caesar, the German tribes had conceived and acknowledged the idea and existence of a public interest, and, in general, had submitted to a mode of government in which the chiefs and the people had their departments as well as the prince. They are described in a similar, but a more cultivated situation, by Tacitus ; and the spirit of liberty and independence which animated their actions, was to produce that limited and legal administration which still gives distinction and dignity to the kingdoms of Europe. Among such nations, accordingly, the women were necessarily free, and sensible only of the restraints which arise from manners.

The state of society, which precedes the knowledge of an extensive property and the meannesses which flow from refinement and commerce, is in a high degree propitious to women. To treat them with cruelty does not consist with the elevation of sentiment

timent which then prevails. Among the people, of whom I speak, even the slave was exposed to no studied insult or oppression (2). Of the women, the warriour and the citizen considered himself as the friend and the protector; and their weakness only served to render the attachment to them the more lasting and tender.

While courage and strength and feats of prowess gave glory to the men, the women were judged of by a different standard. They were studious to recommend themselves by the performance of domestic duties. They attended to the cares of the family and the house; and the mother found a long and a serious occupation in the rearing of her children, who were not allowed to approach the father in public till a certain age (3). To her daughters she endeavoured to give the accomplishments which might win to them the chiefs who were most celebrated and powerful. To her sons she recited the exploits of their ancestors, and formed them to valour.

Nor are these the only sources of the respect which was paid to them. It has been often remarked, that, in every period of society, the women are more disposed to rapture and devotion than the men, and that their curiosity to pry into futurity is more extravagant. The superstitious weaknesses, however, of the sex, which, in refined times, are a subject of ridicule, lead to reverence and attention in a rude age. The Germanic armies seldom took

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the field without fortresses ; and these had an important share in directing their operations (4). In private and civil affairs, their authority was not less decisive. On the foundation of the wonder and astonishment excited by the knowledge arrogated by the women, by the skill they displayed in divination, and, above all, by the ceremony and the cruelty of the rites they practised, a solid and permanent influence was established (5). It was thought, that they had something divine in their nature ; and the names of many of them, who were worshipped as divinities, have come down in history (6).

To attend to the qualities of plants, and to the curing of wounds, was another branch of their occupation (7) ; and, in times of war and depredation, it is difficult to conceive a circumstance which could recommend them more. Nor were they inattentive to adorn their persons. The linen, which made the principal article of their dress, was of their own manufacture ; and they had a pride in intermixing it with purple (8). They went frequently into the bath ; their hair flowed in ringlets ; a part of their charms was industriously displayed ; and, in evidence of their beauty, there may be brought the testimony of the historian, and the song of the poet (9).

In the more serious and important wars in which these nations engaged, the chiefs and warriors seem constantly to have carried their wives and female relations along with them as an incitement to their valour. These objects of their affection they placed

placed at a small distance from the field of battle: And the most terrible calamity which could befall them, was their captivity. By their importunity and wailing, it is recorded, that armies, in the moment of submission, have been recovered; and the stipulations of states were never so certainly secured as when some virgins of rank were delivered among the hostages (10). In the blood of their women, it was conceived there was a charm and a virtue; and hence it proceeded, that, to their uncles by the *mother* and to their fathers, children were the objects of an *equal* affection and tenderness (11).

But, what evinces their consideration beyond the possibility of a doubt, is the attention they bestowed on business and affairs. They felt, as well as the noble and the warriour, the cares of the community. They watched over its interest, considered its connection with other states, and thought of improving its policy, and extending its dominion. They went to the public councils or assemblies of their nations, heard the debates of the statesmen, and were called upon to deliver their sentiments. And, what is worthy of particular notice, this consequence in active scenes they transmitted to their posterity (12).

Such, in general, was the condition of women among our ancestors, while they were yet in their woods; and such, I should think, is in a great measure their state in every country of the globe in an age of society and manners, which knows not the cares, the corruptions, and the distinctions of property (13).

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S E C T I O N III.

Of Marriage and Modesty.

IT is not to be denied, that, before the idea of a public is acknowledged, and before men have submitted to the salutary restraint of law, the disorders of promiscuous love disturb and disfigure society (1). Yet, even in these wild and informal times, there exist parties, who, clinging together from choice and appetite, experience the happiness of reciprocal attentions and kindnesses; who, in the care of their offspring, find an anxious and interesting employment, and a powerful source of attachment; who, moved by love, by friendship, by parental affection and habitude, never think of discontinuing their commerce; and who, in fine, look forward with sorrow to the fatal moment when death is to separate them.

This cohabitation or alliance, attracting attention by its decency, its pleasures, and its advantages, would grow into a custom or a fashion. For, what men approve, they will imitate. To this

use, therefore, it seems not unreasonable to refer the institution of marriage; and thus, before it is known as a political consideration, it, in some measure, subsists in nature. As men increase in their numbers, they perceive the necessity of attending to an union, which is no less important to society than to the individual, which has in view the support of the one, and the felicity of the other. A ceremonial is invented which gives it authority and duration. The state takes a share in the cares of the lover, and prescribes the forms that are to bind him to his mistress. Nature, while she fits the sexes for each other, leaves it to polity or law to regulate the mode of their connection.

The race of men who antiently inhabited Germany, are represented, as was formerly observed, in the condition of nations; and a legislature, composed of the prince, the nobles, and the people, directed their operations. This assembly, which gave a sanction to military expeditions, and adjusted alliances and treaties, managed also the objects of internal concern. It extended its jurisdiction over the women as well as over the other parts of the community, and ascertained the ceremonial of marriage.

When the individual was called from the house of his father, and invested with arms; when he was advanced from being a part of a private family to be a member of the republic, he had the capacity of entering into contracts, and of singling out the object of his affections. The parties who had agreed to unite
their

their interests, having obtained the approbation of their parents and relations, made an interchange of gifts in their presence. The lover gave his mistress a pair of oxen, a bridled horse, a shield, a sword, and a javelin; and she, in her turn, presented him with some arms. It was thus they expressed their attachment to each other, and their willingness to discharge mutually the duties of the married state. This was their strongest tie; these were their mysterious rites, these their conjugal deities (2).

Nor, let it be fancied that, in this ceremonial, there was any thing humiliating to the woman. It suited exactly the condition of a rude society, and must not be judged of by the ideas of a refined age. The presents, indeed, were expressive of labour and activity; but labour and activity were then no marks of reproach; and, in fact, the joined oxen, the prepared horse, the presented arms, instead of indicating the inferiority of the bride, denoted strongly her equality with her husband. They admonished her, that she was to be the partner and the companion of his toils and his cares, and that, in peace and in war, she was to sustain the same fatigues, and to bear a part in the same enterprises (3).

The fidelity of the married women among these nations, and the constancy and tenderness of their attachment, express also their equality with the men and their importance (4). A strict observance of the marriage-bed was required of them. The

crime of adultery was rare ; and, in the severity of its punishment, the respect is to be traced which was paid to modesty. It was immediate, and inflicted by the husband. He despoiled the culprit of her hair and garments, expelled her from his house before her assembled relations, and whipped her through the whole village (5). Of the young women, the most powerful recommendation was the reserve and coyness of their demeanour. A violation of modesty was never pardoned. Nor youth, nor beauty, could procure a husband. Vice was not here sported with ; and, to corrupt and to be corrupted, were not termed the fashion of times (6).

In the simplicity of their manners, they found a preservation against vice more effectual than the laws of cultivated states. The gallantries of the young men began late ; their youth was, therefore, inexhausted. Those of the young women were not earlier. They mingled, when they were equal in age, in prosperity, and strength, and had a progeny who expressed their vigour. Disgrace attended on celibacy ; and the old were honoured in proportion to the number and the merits of their descendants. A dread of pain and the care of beauty checked not generation (7). The mother suckled her own children (8) ; and, in discharging this task, anticipated the greatness and the felicity she was to acquire and to experience from their virtues, and in their gratitude (9).

It was thus the chastity of the women was guarded: It was thus their importance was confirmed. No allurements of public shows and entertainments relaxed their virtue, and insinuated into them the love of pleasure; no incitements of luxury inflamed their desires and exposed them to corruption; and what the Romans seem to have considered as particularly fatal, no acquirements of knowledge and of letters discovered to them the arts which minister to love (10).

In some of their states or communities, the respect of modesty was so great, that it was not lawful but to virgins to marry; who, without the hope or wish of second nuptials, received one husband, as they had done one body and one life, and had no thoughts or desires beyond him. It was their ambition and pride, if they survived the objects of their affection, to preserve, unfulfilled, the honours of widowhood; and, when the barbarians had made settlements in the provinces of Rome, when their manners had refined, and the sex were, in some measure, emancipated from this restraint, the spirit of the usage continued to operate. It augmented, as to the widow, the matrimonial symbols; a larger dower than usual was necessary to overcome her reluctance to a second bed (11); and, while it encouraged the king or the magistrate to exact a greater fine from her on her marriage (12), it entitled her to a higher compensation for injuries (13).

Amidst the modesty of such usages and manners, we must not look for polygamy. It was unknown to these nations; though, it is to be allowed, that a few of the chiefs or more renowned princes were surrounded with a number of wives (14). This, however, was a matter of grandeur, not of appetite; and its source is to be found in maxims of policy, in the ambition of individuals, and in that of states. A prince, to support or extend his greatness, connected himself with different families; and the deliberations of his tribe not unfrequently pointed out to him the alliances he should court (15).

To the degrees of consanguinity and blood, concerning which nature has dictated so little, and polity so much, it is not to be conceived that they paid a scrupulous attention in their marriages (16). It is a subject on which no infant-communities are exact. They attended to it when, having fallen from their woods, they grew refined by time, observation, and experience.

C H A P T E R II.

The political Establishments of the Barbarians after they had made Conquests.

S E C T I O N I.

The Barbaric Conquests. The Origin of the Domains of the Prince, and of Allodiality. The Lands of the Fisc. The Foundations of the Feudal Association, the Rise of the Feudal Grant, and the Genius of the Feudal System.

THE Romans, corrupted and servile in every quarter of the empire, were unable to oppose the valour and the activity of the Germanic tribes. And, the manners of the conquerors and the conquered being essentially different, and even contradictory, the revolution produced in the condition of Europe was total and decisive (1). It is thence chiefly, by an attention to the way of thinking which prevailed in their original seats, that the

state

state is to be investigated which the barbarians exhibited on their conquests ; and that the origin and the nature of those institutions are to be discovered, which, overturning in every country they invaded, the antient forms of legislation and government, arose on their ruins. In the masterly treatise, accordingly, in which Tacitus paints, with his inimitable pencil, the manners of these nations, I must look for the foundations of this state, and these institutions.

‘ The members of a German nation,’ says this accomplished historian, ‘ cultivate, by turns, for its use, an extent of land corresponding to their number, which is then parcelled out to individuals in proportion to their dignity : These divisions are the more easily ascertained, as the plains of Germany are extensive ; and, though they annually occupy a new piece of ground, they are not exhausted in territory (2).’

This passage abounds in instruction, the most important. It informs us, that the German had no private property in land, and that it was his tribe which allowed him annually for his support a proportion of territory ; that the property of the land was invested in the tribe, and that the lands dealt out to individuals returned to the public, after they had reaped the fruits of them ; that, to be entitled to a partition of land from his nation, was the distinction of a citizen ; and that, in consequence of

of this partition, he became bound to attend to its defence, and to its glory.

With these ideas, and with this practice, the Germans made conquests. In conformity, therefore, with their antient manners, when a settlement was made in a province of the empire, the property of the land belonged to the victorious nation, and the brave laid claim to their possessions. A tract of ground was marked out for the sovereign ; and, to the inferior orders of men, divisions corresponding to their importance were allotted.

But while, in their original seats, such partitions were annual, it was expedient that they should now be invested in the possessor. A more enlarged idea of property had been gradually unfolding itself(3) ; and, though it was convenient to, and suited the views of a narrow community, to take back its land, the measure was not practicable in an extensive society. Nations were no longer to shift their habitations. The boundaries of particular states were to be respected. The tribe ceasing to wander, the individual was also to be stationary. The lot or partition now received by him, was to continue in his possession, and to be an object of his industry. He was to take root, if I may speak so, in a particular spot. He was to bestow on it his affection ; it was to feed and to enrich him with its produce. His family were to feel an interest in his estate ; his sons were to succeed to him. Heirs were to fail in the blood of the pro-

prietor. It affected him, that the crown or a stranger should possess the subject of his toils and attentions. The powers of sale and donation came to be understood. The right of holding a landed territory with no limitation, and of disposing of it at pleasure, was known and prevailed.

The advantages of property open themselves with time. They were not observed by the German in his woods. But, when he was no longer the member of a narrow community, and felt his unimportance in the extensive kingdoms which arose on his conquests, when other professions were to be exercised beside that of the warriour, his attention turned from the public to himself. Ideas of interest pressed in upon him on every side. He was no longer to act chiefly from appetite and passion. He was to look forward to distant prospects. He was to busy himself for advantages which were to arrive slowly, and which were often to elude his diligence. He had passed from the empire of manners to that of laws. Riches had become a source of distinction; and his mind was to be torn with cares, anxiety, and ostentation.

When we mount up to the origin of customs, we are to be struck with their simplicity. The lot or partition to the sovereign was to constitute his *domains*. It was to support his splendour, to defray the expences of government, and to maintain his household. The lot or partition to the individual was

to give rise to *allodiality*. It was the land which was *free*, which was named *proprietor*, in contradistinction to *tenure* (4); and, being still the mark of a citizen, it subjected him, as in Germany, to the general obligation of taking arms in defence of the community (5).

But the domains of the sovereign, and the lands of lot or partition to the people, could not exhaust all the territory of a conquest. They were principal and natural objects of attention. Yet, after their appointment, there were much extensive property, and many fair possessions. The antient maxims of the people did not allow them to seize these by a precarious occupation. Men, who had connected the property of land with the tribe, and not with the individual, could not conceive any title in consequence of which they might arrogate possessions to humour their fancy, or to flatter their pride. Their antient notions continued their operation: The community was concerned with what no man could claim. The lands, accordingly, which were assigned neither to the sovereign nor to the people, which formed not the domains of the former, nor the partitions of the latter, were the lands of the state or the Fisc. And, under this appellation, in fact, they are known in the codes of the barbarians (6).

Of the territories of this kind, the king, as representing the state, was to take the direction; and, in the grants and disposal

of them, the barbarians were also to be assisted by the usages to which they had been accustomed in their woods.

A German state comprehended a sovereign, who acted for the interest of the community, chieftains, who governed in different districts, and the mass of the people. The sovereign and the chiefs owed their rank or estimation, sometimes to their birth, but oftener to their merits. The former was ambitious to support, with lustre, the honour he sustained: The latter were studious to deserve his favour, and to vie with one another. The people, as they were struck with the qualities of particular chiefs, ranged themselves under their banners, and devoted themselves to their fortunes. It was the great emulation of the chiefs to excel in the number and the courage of their retainers. This was the dignity which most attracted them, and the power they courted most. These were their ornaments in peace, and their defence in war. In the field it was infamous in the chief to be surpassed in valour; it was infamous in the retainers not to equal the valour of the chief. To guard and to defend his person, and to ascribe to his glory all their gallant acts, was their greatest oath. The chief fought for victory; the retainer for the chief(7).

These connections, and this subordination, followed the barbaric nations into their settlements. And here we may perceive the *foundations* of the feudal association.

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But land, which was the tie that bound together the members of a feudal kingdom, had no concern in these appearances. The chief could not confer a landed property on his retainer, because land had not yet descended to individuals. It obeyed, however, the order of nations; and the more *powerful* of the Gaulic and German communities had been in the practice of granting, under *military service*, proportions of *territory* to *inferior* tribes. Communities were antiently the vassals of communities (8). Here then was the *essence* of the feudal grant.

Accustomed to this way of thinking, and to these institutions, a German state found itself in a province of the Romans. The sovereign, from gratitude and interest, was disposed to court the chiefs who were the associates of his victories; and the chiefs were not insensible of their importance. The retainers were proud of their prowess and their services; and the chiefs were forward to show their favour and affection to men who constituted their strength. Land had begun to be detached from nations, and to be connected with *individuals*. And the conquest obtained was in danger from the turbulence of the times, and from new invaders.

The situation of a German state which had acquired a settlement, produced thus the necessity of drawing closer the connection of the sovereign and the chiefs, and of the chiefs and the people. Its antient usages concurring with this situation, pointed

ed out the conduct to be pursued. The lands of the *fief* were the medium which was to operate the purpose that was so necessary. The sovereign took the direction of these ; hence possessions flowed to the chiefs, under the burden of presenting themselves in arms at the call of the sovereign ; hence the chiefs dealt out lands to their retainers, under the like injunction of continuing to them their aid (9) ; and thus a political system was founded, which was to act in society with infinite efficacy.

Of this system the intention and the spirit were national defence, and domestic independence. While it called out the inhabitant and the citizen to defend his property and to secure his tranquillity, it opposed barriers to despotism. Growing out of liberty, it was to promote the freedom of the subject. The power of the sovereign was checked by the chiefs, who were to form a regular order of nobility ; and the aristocracy, or the power of the chiefs, was repelled by the retainers and vassals, who, constituting their greatness, were to attract their attention. The chief, who oppressed his retainers, was to destroy his own importance. It was their number and their attachment, which made him formidable to his prince and to his equals.

In this manner, I would account for the origin of the domains of the sovereign, and of allodiality ; for that of fiefs (10) ; and for the genius they displayed in their earliest condition. And this short deduction may be sufficient to exhibit a general idea of the state of land among the barbaric tribes on their conquests.

S E C-

S E C T I O N II.

Of the Property of the Women. The Dowry, the Morgengabe, and the Marriage-portion. The Communication to the Women of the Powers of Succession and Inheritance. The advancement of Manners.

HAVING distinguished the property of the men, it is fit I should treat that of the women. I have observed, that, among the antient Germans, and the case, it is to be presumed, is similar in every rude community, the property of the land was invested in the tribe or nation. His proportion of corn was allotted to the individual by the magistrate, and corresponded to the number of his family, the degrees of his merit, and the importance of his service. He derived, accordingly, no source of influence from the property of land. His chief, and almost only riches, consisted in cattle (1); and, in those rude and remote times, the more powerful supported their hospitality and magnificence by war and violence. They collected their retainers, and committed incursion and plunder upon neighbouring nations; and their states disengaged not a practice which was favourable to the military virtues.

In this situation, it is obvious, that no property could be possessed by the women (2). They had neither land nor cattle, and could demand no share of the booty procured by robbery and depredation. While they remained in their virgin state, they continued, therefore, in the families of which they were descended (3); and, when they passed, by marriage, into other families, their husbands became bound to attend to and to provide for them. Hence the custom recorded by Tacitus: ‘*Dotem* non *uxor* man-
‘*rito*, sed *uxori maritus* offert.’ On the death of the husband, the wife received this provision; and, it was the object of it to render her alike independent of the house she had left, and of that into which she had entered (4).

This provision consisted, doubtless, of goods; and, even in this form, it is to be conceived, it discovered itself after the Germanic conquests. When time, however, refinement, and necessity, had taught the barbarians the uses of wealth, and individuals were proud of acquisitions in land, it assumed more enlarged appearances; and property opening to the women, they acquired a source of consideration which they had not formerly known, and which was about to produce consequences of no less moment to themselves than to society.

'The *dos* or *dower* came to consist in money and in land. It was to arise out of a personal estate, out of allodial property, or out of fiefs. With the widow, it remained during her life, and
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on her death it passed to the heirs of her husband. In general, it was regulated by his deed. In some places it was governed by custom. It was sometimes constituted by ceremonies, which grew out of the particular situation of parties (5); and, when no private act had taken place, where no custom directed, and where no peculiarity of situation prevailed, it was fixed and ascertained by established and statutory laws (6).

Nor was it a *dower* only, that the husband bestowed on the wife. The morning after his nuptials, he made her a present, which was valuable in proportion to his generosity and wealth. This acquisition is known by the appellation of *morgengabe* (7); and, possessing it in full property, she could convey it away during her life, allow it to pass to her heirs, or dispose of it by a deed, to take effect after death (8).

The experience of the uses of property was to produce a solicitude to possess it. While the *dower* and the *morgengabe* gave distinction to the wife, the daughter was to know the necessity of acquisitions, and to wish for them. The parent was to encourage her hopes, and to gratify his affections. He was to make her state correspond to his riches and his dignity. The refining intercourse, and the rising luxuries of society, were to demand this attention. A portion was to go from the bride to the husband. The personal fortune, to which the daughter had been a stranger in the days of Tacitus, made its appearance. And

wealth in the female sex, joining itself to beauty and wit, contributed to support and extend their dominion.

The custom, in fact, of giving portions to the women, is to be traced to an early period in the laws of the Germanic and Celtic nations (9). The present, simple and slight in its origin, grew complicated and extensive. It kept pace with luxury and opulence. The *dower*, which before was chiefly directed by the will of the husband, became now a formal matter of treaty and agreement. The bride had a title to stipulate her claims. The riches she brought, and her rank, were duly considered; and a provision in proportion to both were allotted (10).

The *portion* of the daughter, like the *dower* and the *morgen-gabe* of the wife, was originally to consist of goods, and then of money. It was afterwards to consist of land. But, when the father was first to bestow land on the daughter, it is to be understood, that it was a part of his property, which was free or *allodial*. Fiefs, in their commencement, could not be enjoyed by the women. The actual service of the shield was required from the vassal. To admit them to allodiality, was even a deviation from the spirit of the antient customs of the barbarians; and, it was only in the evolution of the rights of property, that they were permitted to acquire it. A *proprietor* then, or an *allodial* possession, might come to them by donation or by testament. But, by the rules of regular succession, it was to go

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to the sons; and, according to law, they were only to inherit, when there were to be no sons, or when the sons were to fail (11). The communication, however, of these privileges was a powerful addition to their importance, and was to lead to advantages still greater.

The capacity to receive allodiality by grant, by gift, by testamentary destination, and to enter to it by succession, in the event of the want of male heirs, or after their demise, introduced and fostered the idea of their admission to fiefs. As the original rudeness of the barbaric nations yielded to successive improvements, as manners softened, and the arts of peace were cultivated, the propensity to add to their emolument, and to contribute to their pleasure, grew stronger. If they could not march to the field, and charge an enemy at the head of their vassals, they might perform these offices by substitution. An approved warriour might discharge, for the female possessor of a fief, the military duties to which it was subject. A right to succeed to feudality was, by degrees, acknowledged in the sex; and, when invested in the grant, they were to exert all its civil rights. Though they deputed its military command, they could sustain its honours and prerogatives. They were to hold courts, and exercise jurisdiction in ordinary fiefs; and, while they attended to these cares in noble ones, they were also to assemble with the peers, in the great assemblies of the state in every country of Europe, to deliberate, to vote, and to judge. Neither the

military service incident to every fief, nor the obligation of attending the assembly of the peers or the council of the nation incident to fiefs, which were noble, could prevent the advancing condition of the women. The imbecillity of their nature, which gives a strength to all their other attractions, made them fulfil the first duty by delegation : The last they were long to perform in person (12).

From the moment that settlements were made in the territories of Rome, the women were to improve in advantages. The subordinations of rank, which before had been chiefly discriminated by merit, were now marked more palpably by riches and property. Modes of a distant and respectful demeanour were invented. New sentiments of dignity and meanness became known. Displays of elegance and luxury took place. The extent and order of established kingdoms rendered men more domestic. Less engaged with the public, the female sex engrossed more strongly their regard and notice. They approached them with greater reverence ; they courted them with an assiduity that was more tender and anxious. The women, in their turn, learned to be more vain, more gay, and more alluring. They grew studious to please and to conquer. They lost somewhat of the intrepidity and fierceness which before were characteristic of them. They were to affect a delicacy, and even a weakness. Their education was to be an object of greater attention and care. A finer sense of beauty was to arise. They were to abandon all employments

employments which hurt the shape and deform the body. They were to exert a fancy in dress and in ornament (13). They were to be more secluded from observation. A greater play was to be given to sentiment and anticipation. Greater reserve was to accompany the commerce of the sexes. Modesty was to take the alarm sooner (14). Gallantry, in all its fashions, and in all its charms, was to unfold itself.

But, before I can express, with precision, the consideration they attained, and perceive, with distinctness, the splendour which the feudal association was to throw around them, I must look for the extension of fiefs, and for the sources of chivalry. Fiefs and chivalry were mutually to act upon one another. The feudal association was to direct and to foster chivalry ; and, from chivalry, it was to receive a support or lustre. They were plants which were destined to take root about the same period, and to sympathise in their growth, and in their decline. The seeds of them had been gathered by the barbarian in his woods ; and, to whatever soil or climate his fortune was to carry him, there he was to scatter them with profusion.

S E C T I O N III.

The Grandeur consequent on Property, and the Power of the Nobles. The Prerogative of private War, and its destructive Tendency. The Conversion of Allodiality into Tenure. The Extension and Universality of Fiefs.

PROUD with victory, with riches, and with independence, the conquerors of the Romans separated to enjoy their possessions and their grandeur. The chiefs continued, as of old, to possess a military authority and a civil jurisdiction (1). The prerogatives, which before they had arrogated as due to their merit, they now enjoyed as the holders of fiefs. In war they commanded their vassals and retainers, and they judged of their disputes in times of peace. The inhabitants of their territories were soldiers and subjects. Their castles and household bore a resemblance to the palace, and the establishment of the sovereign. They had their officers and their courts of justice; and they exercised the powers of punishment and mercy (2). They even continued to exert the privilege of making war of their private authority; and the sovereigns of Europe could behold subjects in arms, who infringed not their allegiance to the state (3).

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This right of spreading, with impunity, the tumults of war, operated as the leading source of the disorders of the middle ages, and marks expressively their condition and manners. It demands, of consequence, an attention which I must refuse, at present, to the other prerogatives of nobility ; and, in order to discover its origin, I must glance at the beginnings of criminal jurisprudence.

In the early ages of society, the individual depends for protection on himself. There is no tribunal to which he can appeal for redress. He retaliates, with his own arm, the insult he has suffered ; and, if he is unable, of himself, to complete his revenge, he engages his friends to assist him (4). Confederacies are formed for attack and for defence⁽⁵⁾, and the members composing them are animated with the same passions. In this perturbed state of mankind, the punishment of the offender is disproportioned to his crime. Men, frantic with rage, are unacquainted with pity or with reason. The most barbarous actions, and the most cruel disorder, are perpetrated and prevail. It is perceived, that the interest of the community is injured. Yet the right of revenge, so dangerous in the hand of the individual, cannot, without injustice, be torn from him. It is equitable that he be satisfied for the wrongs he has endured ; but it is no less equitable, that the public do not suffer by his violence. He is allowed, accordingly, to gratify his resentment, but through the power of the magistrate, who, while he feels for

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the injuries he has received, can also look with compassion to the criminal (6).

It is not, however, to be imagined, that this improvement takes place at once, and that every individual is, in the same moment, made to relinquish the exercise of his right of revenge. In rude times, the chief distinction among men arises from their personal qualities. Force of body, and vigour of mind, procure then to their possessors the greatest attention and respect. A distinguished warrior, or a chief, must be treated very differently from the vulgar ; and, though the exercise of private revenge is to be ravished from the herd of the community, it is yet to continue in the jurisdiction of the great and the powerful. What is possessed by a few, grows in time a mark of honour, and a privilege of nobility (7).

Among the Germans, in the days of Tacitus, the exercise of the right of revenge had passed, in a great measure, from the multitude. It remained, notwithstanding, with the chiefs ; and they were not, on their conquests, in a disposition to renounce so splendid a distinction. They enjoyed, as a prerogative, the exercise of a right, which is destructive to order and society ; and, in times when the art of legislation and government was only approaching to perfection, their claims were acknowledged. The freedom of revenge, at first unlimited, was confined ; and the barons made war of their private authority (8).

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It is thus that this prerogative arose which filled Europe with confusion. Nobles, haughty and independent, did not think of accepting a fine as a compensation for an insult, and submitted not their disputes to a judge. They brought them to the decision of the sword; and, their vassals and retainers, entering into their sentiments and feelings, partook of their glory and disgrace. They were rivals whom nothing could unite, but the enemies of the state, or the encroachments of the sovereign. To repress these they could act with cordiality. But, in their usual carriage to one another, they were sullen, jealous, and proud; and, it was their chief employment to vie in displays of magnificence, or to try their strength in hostility.

In the state of tumult, bloodshed, and oppression, produced by the exercise of the prerogative of private war, a most important distinction was effected between the holders of fiefs, and the possessors of property. While, in the imperfection of government, the magistrate could not extend his power with equal force over all the orders of men in the society; while the weak were exposed to the insults and the passions of the strong; while nobles, haughty and independent, could legally prosecute their resentments with the sword, revenge their wrongs, and gratify their avarice and cruelty, the holders of fiefs enjoyed a supreme advantage over allodial proprietors. A Lord and his retainers, connected together in an intimate alliance, following the same standard, and adopting the same passions, could act with concert and effi-

cacy. But allodial proprietors were altogether disqualified to defend themselves. Being distant and disengaged, they could form and support no continued or powerful confederacy ; and the laws, in fact, did not permit them to enter into factions and hostilities. The violence of the times created an absurdity. It gave to gifts under service, and revertible to the grantor, a value superior to lands which were held in full property, and at the disposal of the possessor. It made necessary the conversion of *proprietor* into *tenure*.

Nor was this the only consideration which had weight with the possessors of property. In every monarchy, but in one more particularly that is governed by feudal ideas, rank and pre-eminence attract chiefly the attention, and excite the ambition of individuals. The king being the fountain of honour, and distinctions flowing from his favour, the ranks of men were nicely adjusted ; and, in proportion as they approached to his person, they exacted and received respect. From this principle it naturally proceeded, that allodial proprietors were treated with contempt. Holding by no tenure, and occupying no place in the feudal arrangements, they could not draw observation. Their pride was alarmed, and they wished for the respect and the security of vassals.

Princes, bent on the extension of fiefs, discouraged these proprietors. Their ambition, their abilities, and their prerogatives, furnished

furnished them with the greatest influence ; and they employed it to give universality to a system, which was calculated to support the royal dignity and the national importance. Compositions for offences inferior to those which were allowed to a vassal, were deemed sufficient for the proprietors of allodiality. In the courts of justice they felt the disadvantages of their condition. Mortified with regal neglect, without sufficient protection from the laws, exposed to the capricious insolence and the destructive ravages of the great, disgusted with rudeness, contempt, and indignity, they were driven into the circle of fiefs. They courted the privileges and the protection which were enjoyed by vassals. They submitted their estates to tenure, selecting to themselves a superior the most agreeable, granting to him their lands, and receiving them back from him as a feudal donation (9).

In this direction of affairs, the extension of the feudal institutions was unavoidable. The landed property was every where changed into feudality. The empire of fiefs was universal. Even land, the great source and medium of tenure, was to be insufficient for the multitude of those, who were pressed to be vassals, by their wants and feebleness, and who were invited to be so by the great, in the wildness of their contentions, and amidst the enormity and misrule created by the exercise of private war. Every matter that was an object of profit, of pleasure, of use, or of commerce, was to become the foundation of a fief. The right

of judging the delicts committed in a forest, the right of the chase or of hunting in a certain district, the tax on public roads, the privilege of escorting merchants to a fair or a market, offices of trust and of justice, the swarms of bees in a woody territory, the profits of a mill, the fishing in a water, the allotment of a pension, and other rights and possessions in still wider deviation from the original grounds or doctrines of feudalism, were to be held as fiefs (10). The imagination was exhausted to invent new methods of infeudation. None could be too romantic or whimsical, while strength or importance was derived from them to the grantors. The holders or vassals were bound to military service, and subject to obligations; and the chief and the eminent, in consequence of this policy, extended, supported, and maintained their public magnificence, their private consideration, and the ruinous conflicts and animosities in which they were involved by the passions of others, and their own.

S E C-

S E C T I O N IV.

Arms, Gallantry, and Devotion. The origin of Knighthood and the Judicial Combat, of Tournaments and Blazonry. The Sources of Chivalry.

WHEN the inhabitants of Germany fellied from their woods, and made conquests, the change of condition they experienced produced a change in their manners. Narrow communities grew into extensive kingdoms, and petty princes, and temporary leaders, were exalted into monarchs. The ideas, however, they had formerly entertained, and the customs with which they had been familiar, were neither forgotten nor neglected. The modes of thought and of action which had been displayed in their original seats, advanced with them into the territories of Rome, continued their operation and power in this new situation, and created that uniformity of appearance which Europe every where exhibited. Their influence on the forms of government and polity which arose, was decisive and extensive ; and, it was not less efficacious and powerful on those inferior circumstances which join to constitute the system of manners,

ners, and to produce the complexion and features that distinguish ages and nations.

The inclination for war entertained by the Germanic states, the respect and importance in which they held their women, and the sentiments they had conceived of religion, did not forsake them when they had conquered. To excel in war was still their ruling ambition, and usages were still connected with arms. To the sex they still looked with affection and courtesy. And their theology was even to operate in its spirit, after its forms were decayed, and after Christianity was established. Arms, gallantry, and devotion, were to act with uncommon force; and, to the forests of Germany, we must trace those romantic institutions, which filled Europe with renown, and with splendour; which, mingling religion with war, and piety with love, raised up so many warriours to contend for the palm of valour and the prize of beauty.

The passion for arms among the Germanic states was carried to extremity. It was amidst scenes of death and peril that the young were educated: It was by valour and feats of prowess that the ambitious signalized their manhood. All the honours they knew were allotted to the brave. The sword opened the path to glory. It was in the field that the ingenuous and the noble flattered most their pride, and acquired an ascendancy. The strength of their bodies, and the vigour of their counsels, surrounded

surrounded them with warriours, and lifted them to command (1).

But, among these nations, when the individual felt the call of valour, and wished to try his strength against an enemy, he could not of his own authority take the lance and the javelin. The admission of their youth to the privilege of bearing arms, was a matter of too much importance to be left to chance or their own choice. A form was invented by which they were advanced to that honour.

The council of the district, or of the canton to which the candidate belonged, was assembled. His age and his qualifications were inquired into; and, if he was deemed worthy of being admitted to the privileges of a soldier, a chieftain, his father, or one of his kindred, adorned him with the shield and the lance. In consequence of this solemnity, he prepared to distinguish himself; his mind opened to the cares of the public; and the domestic concerns, or the offices of the family from which he had sprung, were no longer the objects of his attention (2).

To this ceremony, so simple and so interesting, the institution of *knighthood* is indebted for its rise. The adorning the individual with arms, continued for ages to characterise his advancement to this dignity. And this rite was performed to him by his sovereign, his lord, or some approved warriour. In conformity,

mity, also, to the manners which produced this institution, it is to be observed, that even the sons of a king presumed not to approach his person before their admission to its privileges; and the nobility kept their descendants at an equal distance. It was the road, as of old, to distinction and honour. Without the advancement to it, the most illustrious birth gave no title to personal rank (3).

Their appetite for war, and their predatory life, taught the Germans to fancy that the gods were on the side of the valiant. Force appeared to them to be justice, and weakness to be crime (4). When they would divine the fate of an important war, they selected a captive of the nation with whom they were at variance, and opposed to him a warriour out of their own number. To each champion they presented the arms of his country; and, according as the victory fell to the one or the other, they prognosticated their triumph or defeat. Religion interceded with arms and with valour; and the party who prevailed, could plead in his favour the interposition of the deity. When an individual was called before the magistrate, and charged with an offence, if the evidence was not clear, he might challenge his accuser. The judge ordered them to prepare for battle, made a signal for the onset, and gave his award for the victor (5).

Nor was it only when his interest and property were at stake, that the German had recourse to his sword. He could bear no

stain

stain on his personal character. To treat him with indignity or disdain, was to offend him mortally. An affront of this kind covered him with infamy, if he forgave it (6). The blood of his adversary could alone wipe it away ; and he called upon him to vindicate his charge, or to perish.

In these proceedings, we perceive the source of the *judicial combat*, which spread so universally over Europe, and which is not only to be considered as a precaution of civil polity, but as an institution of honour (7).

These nations, so enamoured of valour, and so devoted to arms, courted dangers even in pastime, and sported with blood. They had shows or entertainments, in which the points of the lance and the sword urged the young and the valiant to feats of a desperate agility and boldness ; and in which they learned to confirm the vigour of their minds, and the force of their bodies. Perseverance gave them expertness, expertness grace, and the applause of the surrounding multitude was the envied recompence of their audacious temerity (8).

These violent and military exercises followed them into the countries they subdued, and gave a beginning to the *jouys* and *tourneaments*, which were celebrated with so unbounded a rage, which the civil power was so often to forbid, and the church so

loudly to condemn; and which, resisting alike the force of religion and law, were to yield only to the progress of civility and knowledge (9).

Unacquainted with any profession but that of war, disposed to it by habit, and impelled to it by ambition, the German never parted with his arms. They accompanied him to the senate-house, as well as to the camp, and he transacted not without them any matter of public or of private concern (10). They were the friends of his manhood, when he rejoiced in his strength, and they attended him in his age, when he wept over his weakness. Of these, the most memorable was the *shield*. To leave it behind him in battle, was to incur an extremity of disgrace, which deprived him of the benefit of his religion, and of his rank as a citizen (11). It was the employment of his leisure to make it conspicuous. He was sedulous to diversify it with *chosen colours*; and, what is worthy of particular remark, the ornaments he bestowed, were in time to produce the art of *blazonry* and the occupation of the herald. These chosen colours were to be exchanged into representations of acts of heroism. Coats of arms were to be necessary to distinguish from each other, warriours who were cased compleatly from head to foot (12). Christianity introduced the sign of the cross; wisdom and folly were to multiply devices; and speculative and political men, to flatter the vanity of the rich and great, were to reduce to regulation and system what had begun without rule or art.

I N E U R O P E.

It is thus I would account for knighthood, and the single combat, for tournaments and blazonry ; institutions which were to operate with an influence not less important than extensive. And, in the same distant antiquity, we meet the source of that gallantry and devotion, which were to mount them to so wild a height.

To the women, while he was yet in his woods, the German behaved with respect and observance. He was careful to deserve their approbation ; and they kept alive in his mind the fire of liberty, and the sense of honour. By example, as well as exhortation, they encouraged his elevation of sentiment and his valour. When the Teutones were defeated by Marius, their women sent a deputation to that commander, to require that their chastity might be exempted from violation, and that they might not be degraded to the condition of slaves. He refused their request ; and, on approaching their encampment, he learned, that they had first stabbed their infants, and had then turned their daggers against themselves (13). To some German women taken in war, Caracalla having offered the alternative of being sold or put to the sword, they unanimously made choice of death. He ordered them, notwithstanding, to be led out to the market. The disgrace was insupportable ; and, in this extremity, they knew how to preserve their liberty, and to die (14). It was amidst this fierceness and independency, that gallantry and the point of honour grew and prospered. It was the reproach of these women, which,

on the banks of the Rhine and the Danube, filled the coward with the bitterest sorrow, and stained him with the most indelible infamy. It was their praise which communicated to the brave the liveliest joy and the most lasting reputation. *Hi*, says Tacitus, *cuique sanctissimi testes, hi maximi laudatores* (15).

These notions did not perish when the Germans had made conquests. The change of air, and of situation, did not enfeeble this spirit. The women were still the judges of personal merit; and, to some distinguished female, did the valorous knight ascribe the glory of his achievements. Her smile and approbation, he considered as the most precious recompence; and, to obtain them, he plunged into dangers, and covered himself with dust and with blood. *Ab! si ma Dame me voyoit!* exclaimed the knight when performing a feat of valour (16).

Nor were arms and the attachment to women the only features of importance in the character of the German. Religion, which, in every age and in every nation, gives rise to so many customs, mingled itself in all his transactions. He adored an invisible being, to whom he ascribed infinite knowledge, justice, and power (17). To profit by his knowledge, he applied to divination (18); to draw advantage from his justice, he made appeals to his judgment (19); and to acquire, in some degree, his power, he had recourse to incantation and magic (20). The elements and the visible parts of nature, he conceived, at the same time,

to be the residence of subordinate divinities, who, though the instruments only of the agency of the supreme intelligence, had a great superiority over men, and were entitled to their attention and reverence (21). Every tree and every fountain had its genius ; the air, the woods, the water, had their spirits. When he made a step, or looked around him, he felt an impulse of awe and of devotion. His anxiety, his amazement, his curiosity, his hope, and his terror, were every moment excited. The most ample scope was afforded by this theology for the marvellous. Every thing, common as well as singular, was imputed to supernatural agents. Elves, fairies, sprights, magicians, dwarfs, inchanter, and giants, arose (22). But, while the lesser divinities of these nations attracted notice, it was to the supreme intelligence, that the most sincere and the most flattering worship was directed ; and this god, amidst the general cares which employed him, found leisure to attend more particularly to war, and valued his votary in proportion to his courage. Thus religion and love came to inflame, and not to soften the ferocity of the German. His sword gained to him the affection of his mistress, and conciliated the favour of his deity. The last was even fond of obeying the call of the valiant ; he appeared to them in battle, and fought by their side (23). Devotion, of consequence, was not less meritorious than love or than valour (24). Christianity did not abolish this usage. It descended to the middle ages. And, to love *God* and the *ladies*, was the first lesson of chivalry (25).

But, though arms, gallantry, and devotion, produced the institutions of chivalry, and formed its manners, it is not to be fancied, that they operated these effects in a moment ; and that, immediately on the settlements of the barbarians, this fabric was erected. The conquerors of Rome continued to feel and to practise in its provinces, the instincts, the passions, and the usages to which they had been accustomed in their original seats. They were to be active and strenuous, without perceiving the lengths to which they would be carried. They were to build, without knowing it, a most magnificent structure. Out of the impulse of their passions, the institutions of chivalry were gradually to form themselves. The passion for arms, the spirit of gallantry, and of devotion, which so many writers pronounce to be the genuine offspring of these wild affectations, were in fact their source ; and it happened, by a natural consequence, that, for a time, the ceremonies and the usages produced by them, encouraged their importance, and added to their strength. The steps which marked their progress, served to foster their spirit ; and, to the manners of ages, which we too often despise as rude and ignoble, not to political reflection or legislative wisdom, is that system to be ascribed, which was to act so long and so powerfully in society, and to produce infinite advantage and infinite calamity.

It is to those only who apply to rude societies the ideas of a cultivated aera, that the institutions of chivalry seem the production

tion of an enlightened policy. They remember not the inexperience of dark ages, and the attachment of nations to their ancient usages. They consider not, that if an individual, in such times, were to arise of a capacity to frame schemes of legislation and government, he could not reduce them to execution. He could not mould the conceptions of states to correspond to his own. It is from no pre-conceived plan, but from circumstances which exist in real life and affairs, that legislators and politicians acquire an ascendancy among men. It was the actual condition of their times, not projects suggested by philosophy and speculation, that directed the conduct of Lycurgus and Solon.

S E C-

S E C T I O N V.

The Institutions of Chivalry, the Pre-eminence of Women, Politeness, and the Point of Honour.

FROM the state of the feudal nobles, and the exertion of the right of private war, it resulted, that the lower orders of men were courted and attended to in an uncommon degree. The military retainers of a noble, and the inhabitants of his lands, constituted his power ; and it was not his interest to neglect men who might offer their service to an enemy. They shared in his property and greatness, were flattered with his countenance, and formed the bulwark which supported him. His own sons, those of his vassals and tenants, and the ambitious youth whom his renown attracted from a distance, learned under his direction the art of war, fought his battles, and entitled themselves to the honours of chivalry.

Every descendant of a gentleman, or every free-born person, had a capacity to bear arms, and to aspire to knighthood : And a long train of services prepared him to receive it. From his earliest

earliest years he attended the court, and resided in the castle of his lord; and in this school he acquired all the knightly virtues. The emulation of his equals, the example and admonitions of his chief, and the company of the ladies, from whose number he was to select the accomplished fair one, to whom he was to ascribe all his sentiments and his actions, inflamed in him the passion for war, infused into his mind a zeal for religion, and instructed him in all the arts of a respectful gallantry. From the performance of domestic duties, which were the first that employed his attention, he was called to the management of horses and of armour (1). He then entered into greater familiarity with his lord, and accompanied him in all his hazardous expeditions. He became accustomed to perils and to toils; he acquired, by degrees, the whole science of attack and of defence; and, when his hard apprenticeship was over, he acted himself as a knight, and sought and wished for still severer trials to exercise his ambition (2).

To adorn him with arms, was originally, as I remarked, the simple ceremonial which invested the warrior with knighthood. But greater pomp and solemnity came to express his advancement to this dignity. Its importance had grown with time; the feudal institutions had fostered a taste for splendour; and the Christian clergy, who succeeded to the privileges of the Germanic priests, improving on their ambition, made religion interfere in its forms (3).

The candidate presented himself in a church, where he confessed his sins, and declared his repentance and remorse. Absolution was then given him, and he passed the night in watching and pious meditation. In the morning he heard mass, and, approaching the altar, placed his sword upon it, which was returned to him, with benedictions, by the hands of the priest. The eucharist was next administered to him; and, having been bathed, to express the purity which was necessary for the state into which he was to enter, he was dressed in rich robes, and his spurs and his sword were put on. He then appeared before his sovereign or his chief, and, receiving a blow upon the neck, was dubbed a knight. This parade, courtly as well as sacred, was concluded with feasting and merriment (4).

The splendour, however, which accompanied the exaltation to knighthood, was proportioned to the wealth and the birth of the candidate. The same prodigal ostentation and punctiliose grandeur, attended not the investiture of an inferior person, and the descendant of a feudal lord. The rich and the great displayed, on these occasions, their magnificence, their ingenuity, and their taste (5). To furnish an aid, accordingly, to make his eldest son a knight, was one of the *benevolences* which were due to a feudal proprietor from his vassals; and, during the prevalence and purity of the Gothic manners, no contribution was paid with greater chearfulness. But while, in times of festival and peace, the admission to this honour was thus stately and ambitious, a gentle

gentle stroke with a sword was sufficient, during war, to intitle to its privileges ; and, in this form, in the day of a battle, or in the hour of victory, it was usual to bestow it, in order to reward the valiant, and to encourage prowess (6).

When the warrior was promoted to knighthood, the company and tables of the sovereign and the nobles were open to him ; and in times, when personal qualities were the great sources of renown and merit, no distinction was more considerable or important. It was permitted to him to wear gold, fur, and silk, and to surpass in the richness of his dress and arms. And, while his external appearance marked him out from inferior men, he was distinguished in his own order by his ensigns-armorial, and the peculiarities of his blazonry (7). He had certain privileges in hunting ; in executions for debt, it was not lawful to take his horse and armour (8) ; and in the courts of law, fines beyond the usual proportion were awarded to compensate his wrongs. When a prisoner, and in the power of a conqueror, his rank preserved him from an unworthy or ignominious treatment. His word or promise might be relied upon with the firmest assurance. Fetters and chains were only fit for the ignoble. When the chief, or the baron to whom he was more particularly attached, required not his aid, he might enter into the service of another master. Pensions and presents rewarded his prowess ; and he was enriched by the share he received in the spoils of an enemy, and by the ransoms of his captives (9). His usual appearance in the field was on

horseback (10), attended by an esquire; and, if his wealth so increased, that he could afford to have knights in his train, his sovereign allowed him the use of a banner or a standard like the barons, and, like them, he exercised a civil as well as a military jurisdiction (11).

Nor did his death terminate the honours which were paid to him. The solemnity and ceremonies of his funeral, expressed his merits and the public regrets. A monument was erected to him, and the ornaments with which it was embellished, suiting his actions and history, inspired his posterity with a generous emulation. The sword which he had carried to battle, the shield which had defended his body, and the other articles of his dress and armour, became the objects of respect and veneration. The most illustrious persons courted their possession, and churches were often esteemed the only proper repositories of these attendants of his victories and valour (12).

Splendid with knighthood, of which the honour was so great as to give dignity even to kings and to princes, the generous and the aspiring were received in every quarter with attention and civility. The gates of every palace, and of every castle, were thrown open to them; and, in the society of the fair, the brave relieved the severities of war, and fed their passion for arms. Though it was the study of the knight to consult the defence and the glory of the state, and to add to the strength and the reputation

tation of his chief, yet the praise of his mistress was the spring of his valour, and the source of his activity. It was for her that he fought and conquered. To her all his trophies were consecrated. Her eye lighted up in his bosom the fire of ambition. His enterprise, his courage, his splendour, his renown, proclaimed the power and the fame of her perfections.

The women failed not to feel their dominion. The dignity of rank and its proprieties, the pride of riches, the rivalship of beauty, unfolded their excellence and charms. Their natural modesty, the sanctity of marriage, the value of chastity, improved with time and with Christianity. The respectful intercourse they held with the knights, the adoration paid to them, the tournaments at which they presided (13), the virtues they inspired, the exploits achieved to their honour, concurred to promote their elevation and lustre. To their enamoured votaries they seemed to be divinities; and toils, conflicts, and blood, purchased their favour and their smiles.

Placed out to general admiration, they studied to deserve it. Intent on the fame of their lovers, watchful of the glory of their nation, their affections were roused; and they knew not that unquiet indolence, which, softening the mind, awakens the imagination and the senses. Concerned in great affairs, they were agitated with great passions. They prospered whatever was most noble in our nature, generosity, public virtue, humanity, prowess.

They

They partook in the greatness they communicated. Their softness mingled with courage, their sensibility with pride. With the characteristics of their own sex, they blended those of the other.

Events, important and affecting, actions of generosity, enterprise, and valour, exhibited in the course of public and private wars, were often employing their thoughts and conversation. And, in the seasons of festivity and peace, the greater and the lesser tournaments exercised their attention and anxiety (14). These images of war were announced with parade and ceremony. Judges were appointed to determine in them, and to maintain the laws of chivalry ; and they were generally selected from among the aged knights, who came in crowds to live over again the scenes they had acted, and to encourage and direct the intrepidity and the skill of the aspiring youth. The combatants, entering the lists slowly, and with a grave and majestic air, pronounced aloud the *names* of the ladies to whom they had vowed their hearts and their homage. This privilege they had obtained at the expence of many a gallant achievement ; and they were presented by the fair ones with a riband, a bracelet, a veil, or some detached ornament of their dress, which they affixed to their helmets or their shields, and considered as the pledges of victory (15). Every signal advantage won in the conflicts, was proclaimed by the instruments of the minstrels, and the voices of the heralds. Animated by the presence of the ladies,

ladies, by the sense of their former renown, and of that of their ancestors, the champions displayed the most brilliant feats of activity, address, and valour. And the ladies, entering into their agitations, felt the ardours of emulation, and the transports of glory (16). When the tourneys were finished, the prizes were distributed with a ceremonious impartiality. The officers who had been appointed to observe every circumstance which passed in the conduct of the combatants, made their reports to the judges. The suffrages of the spectators were collected. After serious deliberation, in which the most celebrated personages who were present were proud to assist, the names of the conquerors were pronounced. Ladies were then chosen, who were to present to them the symbols of victory; and, in these fortunate moments, they were permitted to imprint a kiss on the lips of these fair disposers of renown. Amidst the contending praise of the judges and the knights, the music of war, and the shouts of the people, the victors were now conducted to the palace of the prince or the noble who exhibited the tourney. There, at the feast, which concluded their triumph, they were exposed to the keen look, and the impassioned admiration of whatever was most accomplished in beauty and in arms. And, in the height of a glory, in which they might well have forgot that they were mortal, they employed themselves to console the knights they had vanquished, and ascribed their success to fortune, not to valour; displaying a demeanour complacent and gentle, disarming envy

envy by modesty, and enhancing greatness by generous sympathy and magnanimous condescension (17).

The operation of love and of glory, so powerful in the institutions of which I speak, was advanced and inspirited by religion; and principles, the most efficacious in our nature, built the fabric of the Gothic manners. Devotion had characterised the barbarian in his woods. The god of war was propitious to the brave, the consecrated standard led to victory (18), and an immortality and a paradise took away its terrors from death (19). Christianity, which looks with a sovereign contempt to every other mode of faith, which holds out to the believer the most flattering joys, and which, not contented with haunting guilt with remorse in the present scene, lifts it from its grave to torture it with eternal pains in another existence; Christianity, I say, was more calculated, than the superstitions of paganism, to impress the imagination and the heart (20). The rite of baptism taught the follower of Odin to transfer his worship to Christ. To defend Christianity with his sword and his life, became a sacred vow, to which every knight was ambitious to submit. He considered himself as a saint, as well as a hero; and, on the foundation of his piety, the successors of St Peter were to precipitate the armies of Europe upon Asia, and to commence the crusades, those memorable monuments of superstition and heroism (21). The lady, not less than the knight, was to feel the influence of this religion. Society was to be disturbed with the sublime extravagance

travagance of fanatics, who were to court perfections out of the order of nature. Mortifications, austerities, and penances, were to be meritorious in proportion to their duration and cruelty. The powers and affections of the mind and the heart, were to sicken and to languish in frivolous and fatiguing ceremonials. The eye of beauty was to fadden in monasteries and in solitude, or to light the unholy fires of a rampant priesthood. The deity was to be worshipped in abjectness and in terror, as if he contemned the works he had made, and took delight in human desolation and wretchedness.

But, while ecclesiastics, designing and ambitious, were to abuse mankind by the means of this new faith, it was to be beneficial to manners by the purity of its moral. While it was to guard the sexes from frailty, it invigorated the sense of justice; and, in a period of disorder and confusion, taught the knight to be strenuous in vindicating the wrongs of the injured. The weak and the oppressed, the orphan and the widow, had a particular claim to his protection. To disobey their call, was to infringe a law of chivalry, and to incur dishonour and infamy. He seemed, in some measure, to be entrusted with the power of the magistrate; and the fashion of the times made him forward to employ his arm, and to spill his blood in the cause of innocence and virtue.

Thus war, gallantry, and devotion, conspired to form the character of the knight. And these manners, so lofty and so romantic, were for ages to give a splendour to Europe, by directing the fortunes of its nations, and by producing examples of magnanimity and valour, which are unequalled in the annals of mankind. But their effects in policy and war, however conspicuous, are of little consideration, when compared with the permanent tone they communicated to society. The spirit of humanity, which distinguishes modern times in the periods of war, as well as of peace; the gallantry which prevails in our conversations and private intercourse; on our theatres, and in our public assemblies and amusements; the point of honour which corrects the violence of the passions, by improving our delicacy, and the sense of propriety and decorum; and which, by teaching us to consider the importance of others, makes us value our own; these circumstances arose out of chivalry, and discriminate the modern from the antient world.

The knight, while he acquired, in the company of the ladies, the graces of external behaviour, improved his natural sensibility and tenderness. He smoothed over the roughness of war with politeness. To be rude to a lady, or to speak to her disadvantage, was a crime which could not be pardoned. He guarded her possessions from the rapacious, and maintained her reputation against slander. The uncourteous offender was driven from the society of the valiant; and the interposition of the fair was often

often necessary to protect him from death. But the courtesy of the knight, though due in a peculiar manner to the female sex, extended itself to all the business and intercourse of civil life. He studied a habitual elegance of manners. Politeness became a knightly virtue ; it even attended him to the field of battle, and checked his passions in the ardour of victory. The generosity and the delicate attentions he showed to the enemy he had vanquished, are a satire on the warriours of antiquity (23). His triumphs were disgraced by no indecent joy, no brutal ferocity. Courteous and generous in the general strain of his conduct, refined to extravagance in his gallantry to the ladies, and the declared protector of religion and innocence, he was himself to be free from every stain. His rank, his duties, and his cares, made him aim at the perfection of virtue. His honour was to be as incontestable as his valour. He professed the most scrupulous adherence to truth and to justice. And, the defects of civil government, and his personal independence, gave an uncommon value and propriety to his personal fidelity. The formalities of the single combat, which were so scrupulously just, as to remove even the suspicion of every thing unfair and dishonourable, fostered the punctilious nicey of his demeanour (24). To utter a falsehood, was an offence of which the infamy was never to be effaced. The culprit was degraded from knighthood ; a punishment more terrible to the warriour than death (25). To give the lie to a knight was, of consequence, to insult him in a point the most tender ; and, while he was careful to maintain

his integrity, and ambitious to entitle himself to its honours, he was ardent and forward to defend himself against an improper accusation, and to punish the abuser of his name. His delicacies on this head demand respect and commendation; yet the rigid moralist has been pleased to make them the object of his ridicule. His ridicule, however, is as absurd as it is contemptuous. It applies not to the purer ages of chivalry, when honour was inseparable from virtue; and, perhaps, it is unjust in every application, but when it refers to individuals, who, being foul with meanness, lay claim to the consideration of probity and character, and insolently appeal to their swords to support their pretensions.

A
V I E W
O F
SOCIETY IN EUROPE,
IN ITS PROGRESS FROM RUDENESS
TO REFINEMENT.



B O O K II.

C H A P T E R I.

Of the Spirit of Fiefs.

S E C T I O N I.

A Distinction in the History of the Feudal Association. The Feudal Incidents. Their Advantages in one Situation. Their Disadvantages in another. The Influence of these different Situations on Society and Manners.

THE generosity of the barbaric manners was to suffer by the growing propensity to interest. Refinement and property were to open up the selfishness of mankind ; and the feudal

feudal association, which was originally an exercise of bounty and gratitude, was to be a source of oppression and wantonness. The fruits of love, amity, and friendship, were to become the foundation of discord and contention. The superior and the vassal, the chief and the retainer, so intimately connected, and so fondly attached, were to be hostile to each other. Violence and corruption were to disfigure society; and scenes of splendour, liberty, and greatness, were to be succeeded by rapacity, oppression, and meanness.

The distinction of these different situations, though neglected by the antiquary, the lawyer, and the historian, is yet a matter of the greatest importance. It is, in some measure, the key to the history of modern nations. It will lead us to discover many mistakes and misapprehensions which conceal and deform topics of the highest moment and curiosity. It will overthrow many positions which have perplexed and misled the researches of the learned, and the reasonings of the speculative.

While the greatness and simplicity of those manners, which the conquerors of Rome brought with them from their woods, continued to animate their posterity, the feudal association was noble in its principles, and useful in its practice. The solicitudes, and the mercenary spirit which rise up with commerce, were unknown, and the fullest scope was given to nature and the passions. The actions and conduct of men were directed by sentiment

ment and affection. In the ardour of private confederacies, the general feelings of generosity were augmented. The emotions of the heart increased their force by confinement. And the lord and the vassal were linked to each other in the closest connection. The arms and the zeal of his followers were the strength and the bulwark of the chief or the superior. The bounty and the power of the chief or the superior, were the subsistence and protection of the followers or the vassals. Their interests and their passions were the same; and a constant communication of good offices kept alive their attachments.

The vassal, kneeling before his lord, and putting his hands into his, acknowledged him for his superior; 'I become,' said he, 'your man, from this day forward, for life, and limb, and earthly honour.' The lord, receiving him in his arms, gave him the kiss, which bestowed his countenance and favour. This rite, known under the appellation of *homage*, expressed submission and reverence on the part of the vassal, protection and defence on that of the lord. The oath of *fealty*, or the engagement of fidelity, was then pronounced. 'Hear this, my lord,' said the vassal, 'I will be faithful and loyal to you, for the tenements I hold. So help me God and his saints (1).' They were exact to obligations in which were comprised their interest, their glory, and their pleasure. In every act of civil life, in peace and in war, they found alike the uses and advantages of their union. In the castle of the lord, the vassal added to his retinue, and proclaimed his

his magnificence. In his court he assisted in the administration of justice. In the field, he fought by his side, and covered his person with his shield. On the foundation of their connection, and of that of the land or fief, which the former bestowed on the latter, a train of *incidents* were to arise, the unequivocal expressions of friendship and habitude, the tender and affectionate fruits of an intercourse the most devoted and zealous.

While the grants of land were precarious, or for life, the superior was fond to educate in his hall the expectants of his fiefs. And, when they descended to a series of heirs, or in perpetuity, he was careful, on the death of the feudator, to take the charge of his son, and his estate. The former was a hope to him of future greatness. He protected his person, directed his education, and watched over his concerns. He felt a pride in observing his approaches to manhood, and delivered to him, on his majority, the lands of his ancestor, which he had been studious to improve. These cares were expressed in the incident of *wardship*.

The vassal, on entering to his fief, conscious of gratitude, and won with the attentions of his lord, made him a present. This acknowledgement, so natural, and so commendable, produced the incident of *relief*.

Grateful

Grateful for the past, and anxious for the future favour of his chief, the vassal did not incline to ally himself to a family which was hostile to him. The chief was ambitious to add to his power and splendour, by consulting the advantageous alliance of his vassal. They joined in finding out the lady whose charms and whose connections might accord with the passions of the one and the policy of the other. This attention gave establishment to the incident of *marriage*.

When the superior was reduced to distress and captivity, in the course of public or of private wars, when he was in embarrassment from prodigality or waste, when he required an augmentation of means to support his grandeur, or to advance his schemes and ambition, the vassal was forward to relieve and assist him by the communication of his wealth. On this foundation there grew the incident of *aid*.

When the vassal gave way to violence and disorder, or when by cowardice, treachery, or any striking delinquence, he rendered himself unworthy of his fief, the sacred ties which bound him to his lord were infringed. It was necessary to deprive him of his land, and to give it to a more honourable holder. This was the origin of the incident of *escheat* (2).

Amidst the contention of friendship, and the mutuality of mind which exercised and informed the lord and the vassal, there was

experienced a condition of activity, liberty, and happiness (3). The vassals attended to the retainers who were immediately below them. In their turn, they were courted by the lords, whose strength they constituted (4). And the lords gave importance to the sovereign. A subordination was known, which was regular, compact, and powerful. The constituent parts interested in government (5), as well as war, were attentive, in their several departments, to the purposes of order and justice; and, in national operations, they acted with an union that made them formidable. Of this association, political liberty was the result. And, while this fortunate state of things continued, the people, in every country of Europe, came in arms to their national assembly, or appeared in it by their representatives (6).

Such, in a more particular manner, was the condition of the Anglo-Saxon period of our history; and the people, happy alike in their individual and their politic capacity, as men and as citizens, were to bear, more reluctantly, the oppressions of the Norman times. The impression of their felicity was to descend down with vivacity, in the succession of the earlier Norman princes, and to produce the most memorable struggles for liberty.

Nor was it in England only that such convulsions were experienced. The same injustice and oppressions which were to shake this nation, prevailed in every country of Europe, and gave a beginning

beginning to those contentions which were to terminate in the destruction of their ancient independence.

In this island alone, the valour and the fortune of its inhabitants were to teach freedom to revive in the midst of tyranny. The barons and the people were to inform King John of his condition and their own ; and to give those lessons of instruction to his successors which they are never to forget without danger ; and which a future tyrant was to confirm with his blood, while an injured nation made it to stream from the scaffold to atone an insolent ambition, and violated laws.

Disorders, which were to be felt throughout Europe, are not to be referred entirely to the rapacity and the administration of princes. There must be a cause more comprehensive and general, to which they are chiefly to be ascribed.

The original manners which the conquerors of the Romans brought from their forests, were to spend their force. The high sentiments which had resulted from the limited ideas of property, were to decay. The generous maxims of the feudal association, and the disinterested wildness of chivalry, were to suffer with time. Property was unfolded in all its relations, and in all its uses. It became a distillation more powerful than merit, and was to alter the condition of society. By separating the interests of the lord and the vassal, it was to destroy for ever the principles

of their association ; and the *incidents*, which, in a better age, had fostered their friendship, were to feed their rage, and to prolong their animosity. As their confederacy had been attended with advantages and glory, their disaffection was marked with debasement and subjection. Out of the sweets of love, a fatal bitterness was engendered. Sufferance was to succeed to enjoyment ; oppression to freedom. Society and government were to be tumultuous and disorderly ; and diseases and infirmities were to threaten their decay.

In the prevalence of property and of mercenary views, the *ward* of the infant vassal, which the superior once considered as a sacred care and an honourable trust, was to be regarded in no other light than as a lucrative emolument. The acquisitions of the vassal, which, in their state of agreement and cordiality, were a strength to the lord, seemed now to detract from his domains. He committed spoil on the estate which, of old, it was his pride to improve. He neglected the education of the heir. He gave repeated insults to his person. The relations of the vassal were often to buy from the superior the custody of his person and his lands. This right was more frequently to be let out to exercise the rapacity of strangers. The treasury of princes was to increase with this traffic ; and subject-superiors were to imitate, as well from necessity as from choice, the example of princes (7). The heir, on his joyless majority, received the lands of his ancestor ; and, while he surveyed, with a melancholy eye,

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his castles, which bore the marks of neglect, and his fields, which were deformed with waste, new grievances were to embitter his complaints, and to swell his passions.

The *relief*, which originally was no more than a present, at the pleasure of the vassal, on his entering into the fief, was consolidated into a right. An expression of gratitude was converted into a debt and a burden. The superior, before he invested the heir in his land, made an exaction from him, in which he had no rule but his rapacity. His demand was exorbitant and grievous. And if the heir delayed too long to extinguish this fine of redemption, or was unable to pay it, the superior continued his possession of the estate. Rigours, so humiliating and so frantic, produced clamour, discontent, and outrage. Mitigations were to be applied to them, and to prove ineffectual. Laws were to be made against them, and to be disregarded (8).

The *marriage* of the vassal, which could not be abused while their association was firm and their interest mutual, became a most ruinous perquisite, when their association was broken, and their interest discordant. The superior could give his vassal in marriage to whom he pleased. This right he exerted as a property. It might be purchased from him by the vassal himself, or by a stranger. The marriage of the vassal, without the consent of the superior, involved the forfeiture of the estate, or was punished with oppressive penalties. It was a rule, indeed, resulting

out of their former habitudes, that the heir should not be married to his disparagement (9). But this rule was overlooked amidst the violence of the times. The superior had no check but from his humanity, the vassal no relief but in remonstrance.

This right, so mortifying to the male heir, was a stretch of still wilder oppression, and more ferocious cruelty, when exercised on the female ward. Her hand might be tendered at the will of the superior. He might pay no attention to her affections. She was to submit at his mandate to indecent embraces, unsanctioned with love. Her beauty was to lose its sweets, and her heart its enjoyments, to feed his avarice, and to gratify his whim. Her relations were often to buy from him a privilege so frightful; and the unfeeling tyrant was to paint the horrors of its exertion, to extort his demand (10).

The *aid* which, in happier times, the vassal bestowed out of benevolence to relieve the distress, and to assist the grandeur of his lord, became a burden and a tax in the misery of their disaffection. It was arrogated as a duty and a tax. The lord called for an aid or contribution, when his eldest daughter was married, when his eldest son was made a knight, and when, having been taken in war, his own person was to be ransomed. These were esteemed the legal occasions when exactions could be made (11). But custom and practice authorised the requisition of aids on pretences the most frivolous. When the crown or the

lord

lord was disposed to be oppressive, they could find a reason for an *aid*; and wants, not his own, were to affect every moment the substance of the vassal (12).

While their confederacy was maintained, it was not on any slight foundation, that the fief could be taken from the vassal. Cowardice, dishonour, treachery, or treason, were then the causes of *escheat*. The lord was not to be so offended with lesser delinquencies, as to take possession of the estate. In the times, however, of their disagreement, the causes of forfeiture were to multiply, and he was to be active to enforce them. Trespasses and trifles were to be sufficient grounds for the seizure of lands, of which the possessor was offensive. The vassal held a precarious and dangerous territory; and, with a mind disposed to be hostile to his chief, was to observe to him an attentive and punctilious demeanour. If he refused too long to attend the court of the superior, and to give his oath of fidelity; if he happened to commit the slightest infringement of his oath; if he foresaw any misfortune that was to befall his lord, and neglected to inform him of it; if, by any act, he was to affect the credit or the reputation of his superior; if he should chance to reveal any private circumstance concerning him; if he should grant an inféudation in any other form than that in which he held his own; if he should make love to the wife or the daughter of his lord, or should care for his sister, while yet a virgin and unmarried;

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these, and reasons still more absurd, were to forfeit the estate to the superior, and to involve the ruin of the vassal, and that of his family (13).

A system of oppression the most destructive was thus established ; and, by a strange peculiarity in the history of mankind, the same *incidents* were to act in the production of situations the most opposite. In one period, they were to encourage liberty and happiness ; in another, rapacity and savageness. Prosperity and vigour attended the feudal association in its youth. Its maturity was marked with peevishness and infirmities ; and a croud of observers, being only to see it in this condition, were to mistake its spirit, and to survey it without enlargement.

The monks, who, on the revival of letters, presumed to chronicle the transactions of men, looked to the past with the prejudices of their own times. They could know, and could comprehend, no manners but their own. The cultivated historian was to observe and to complain of their omissions ; but, instead of labouring to supply them, he was only to arrange their materials, to hold out, with lustre, some superior names, and to give his narrative the charm of picture and ornament. The lawyer and the antiquary were to be equally uninstructive ; while the former confines his remark to the legislation and the practice of his own age ; and while the latter, amusing himself in the search of dates and of trifles, seeks not to advance into any

any general views, or to catch the spirit of those antient periods, which provoke his sweat and his toil.

The usages and customs which the barbaric tribes brought from their woods, the remote source of all their laws, transactions, and establishments, were to be observed with a transient regard. They are, notwithstanding, the sure guides which are to direct the inquirer in the darkness and obscurity of the middle times. They point to, and evince the distinction that is now made in the history of the feudal association. And, they are to lead to other distinctions of curiosity and usefulness.

S E C T I O N II.

A Distinction in the History of Arms and Chivalry. The Sovereign is considered as the Fountain of Honour. The Epoch of the Grandeur of Chivalry. The Decline of Fiefs. The Remedy for their Recovery. The Invention of Knight-service. The Knight's Fee. The Distinction between the Knight of Tenure and the Knight of Honour. Fiefs under Knight-service.

THE decline of the Gothic manners, while it affected so strongly the feudal association, did not fail to extend its influence to chivalry and arms. Every possessor of a fief conferred, of old, at his pleasure, the dignity of knighthood ; and every person who had been admitted to knighthood, had a title to bestow it. But, when the feudal connection was infringed, and its generous principles were destroyed, the feudatory was disposed no longer to seek out the meritorious whom he might advance to an honour, which was to be an advantage, and to reflect a glory to his superior. He was now the enemy, not the friend of his lord, and wished neither to add to his splendour in peace, nor to his power in war. He had grown more selfish with time,

time, and the knowledge of property. He was to avoid, not less from interest than passion, the having knights in his train. The right which it had been his pride to exercise, he regarded with coldness. And, what the possessor of the fief was careless to bestow, the simple knight did not pertinaciously arrogate as a prerogative. The prince or sovereign, from whom it had always been the greatest favour to receive this dignity, came, by degrees, exclusively to confer it. At the head of the state and of arms, he was to be considered as the fountain of honour.

The distinction of knighthood, accordingly, did not immediately fall in the declension of the feudal association. It felt, indeed, the shock which separated the interests of the superior and the vassal ; but, surviving its impulse, it was to rise, for a time, in height and splendour. When in the creation only, and at the disposal of the Prince, it was to acquire a value from his greatness. It was to be given, for a season, with more choice and reserve, than when at the will of the possessor of the fief, and of the simple knight. Higher feats of prowess, the possession of greater wealth, more illustrious descent, were to be required in its candidate. This was the epoch of its lustre and renown. Heralds, skilful in pedigrees and armories, were to multiply. The duel was to improve in ceremony and parade ; tournaments were to advance in magnificence ; and, a court of chivalry, extensive in its jurisdiction, was to regulate deeds of arms, and usages of war (1).

But, while the feudal association in its decline was thus to contribute to the elevation of the antient chivalry, by threatening its ruin, it was to produce effects of still higher importance, and of an operation not less universal. It was to give a new appearance to fiefs, and a more regular form to the feudal militia. It was to protract the fall of a system already ruinous, to create new disorders, and to lead to new establishments.

Though the cordiality of the lord and the vassal was decayed, the grant of land from the former to the latter continued its obligations. The vassal was held by a tie, which he could not renounce without forsaking his importance. His property and subsistence fastened him to an enemy. His passions and his duties were at variance. He might hate the person of his lord, but he was to bow to him as his superior. The grant of land he enjoyed, bound him to the performance of military service. With a cold heart, he was to buckle himself in his armour ; and, with reluctant steps, he was to follow the march of his chief. Of old, it had been his fondest attention to carry all his strength against an enemy, that he might display his own greatness, and add to the magnificence of his superior. He now furnished unwillingly the least assistance in his power. The fervour of his former conduct was never more to advance the measures of ambition. And, in this state of things, the feudal militia was to obstruct and retard, rather than to forward the operations of princes.

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In the heart of a populous kingdom, and surrounded with subjects accustomed to arms, the feudal sovereign was thus to feel an unnatural weakness. A malady, so formidable, could not but produce an anxiety for its cure. And, what is no less certain than peculiar, in the different countries of Europe, the same remedy was applied to it.

Fiefs, or the grants of land under military service, had advanced from being annual to be for life; and, from being donations for life, they were to proceed to be hereditary. It was before the establishment of this ultimate point in their progression, that the happiness of the feudal association was disturbed. And, it was the establishment of this point which was to afford the opportunity to princes of recovering, in some degree, their greatness. While the cordiality of the vassal was maintained, a *general* obligation of military service was sufficient to induce him to marshal all his force in the field. When this cordiality was destroyed, policy was to extort what his generosity and attachment had conferred. Lands were to be burdened with a *full* and exact proportion of soldiers. The giving them out in perpetuity was the season for annexing this burden. An expedient, natural, and not to be opposed, suggested itself. The tenure of *knight-service* was invented.

A portion of land, of which the grant, by the agreement of the giver and the receiver, entitled to the service of a soldier or a knight,

knight, was a *knight's fee*. An estate, of two hundred fees, furnished, of consequence, two hundred knights. Manours, baronies, and earldoms, were thus powerful, in proportion to their extensiveness. The grants from the sovereign to the nobles claimed the service of so many knights ; and the sub-infeudations of the nobles enabled them to perform this service (2). The tenants of the crown who were not noble, had also their fees, and furnished proportionally their knights. Grants *in capite*, or from the sovereign, and the sub-infeudations of vassals, called out the force of the kingdom. The prince, the nobility, and the people, were in the capacities of a general, officers, and soldiers. A call to arms put the nation into motion. An army, numerous and powerful, could be assembled with expedition, exact in its arrangements, and in a state for defence and hostility (3).

Such, I conceive, was the origin and nature of the tenure of knight-service. And thus, in the history of the feudal institutions, there are two remarkable periods ; the epoch which preceded the invention of knight-service, and the epoch during which it prevailed.

The knights produced by this tenure, differed most essentially from the knights of whom I have formerly spoken. But, though the train of thinking into which I have been led, points to their peculiarities with an obvious clearness, the mistakes of grave

grave men, and an attention to perspicuity, oblige me to express their distinctive characters (4).

The one class of knights was of a high antiquity ; the other was not heard of till the invention of a *fee*. The adorning with arms and the blow of the sword, made the act of the creation of the antient knight ; the new knight was constituted by an investment in a piece of land. The former was the member of an order of dignity which had particular privileges and distinctions ; the latter was the receiver of a feudal grant. Knighthood was an honour ; knight-service a tenure. The first communicated splendour to an army ; the last gave it strength and numbers. The knight of honour might serve in any station whatever ; the knight of tenure was in the rank of a soldier.

It is true, at the same time, that every noble and baron were knights of tenure, as they held their lands by knight-service. But the number of *fees* they possessed, and their creation into rank, separated them widely from the simple individuals, to whom they gave out grants of their lands, and who were merely the knights of tenure. It is no less true, that the sovereign, without conferring nobility, might give even a single fee to a tenant ; and, such vassals *in capite* of the crown, as well as the vassals of *single* fees from a subject, were the mere knights of tenure. But the former, in respect of their holding from the crown, were to be called to take upon themselves the knighthood

hood of honour ; a condition, in which they might rise from the ranks, and be promoted to offices and command. And, as to the vassals *in capite* of the crown, who had *many* fees, their wealth, of itself, sufficiently distinguished them beyond the state of the mere knights of tenure. In fact, they possessed an authority over men who were of this last description ; for, in proportion to their lands, were the fees they gave out, and the knights they commanded (5).

It was, in this manner, that the tenure of knight-service came to recover the feudal militia, at a time when it was perishing in weakness. But, though it bound more closely, in the connection of land, the superior and the vassal, by the fixedness of the service it enjoined, it could not bring back their antient cordiality. It gave a strength and consistency to the military department of the feudal institutions ; but it removed none of their civil inconveniences and burdens. These, on the contrary, were to increase during its prevalence. It was to brace, only, with a temporary vigour, a system which no prudence or art could accommodate to refining manners.

The *incidents*, which had grown with the progress of fiefs, still continued their operation. Every grant by the tenure of knight-service, was attended with homage and fealty, and was exposed to wardship and relief, to marriage, aid, and escheat. The superior had still his pretensions and his claims ; the vassal was still to

to suffer and to complain. Promises of the relaxation of the feudal perquisites, were to be made by princes, and to be forgotten. Legal solemnities of restraint were to be held out, and, occasionally, to produce their effect. But, palliatives, feeble or forced, were not to controul the spirit of the system and the times. Fiefs, while they sustained, in the tenure of knight-service, the grandeur of the European states were wasting with internal debilities. And the eye, in surveying their strength and magnificence, can trace the marks of an approaching weakness and decline.

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C H A P-

C H A P T E R II.

The Progression of Fiefs. The Benefice, the Fief, and Allodiality. Different Opinions on these Topics. The Fruits of the Fief. Its Perpetuity. The Æra of Hereditary Fiefs. Knight-service. Particular Applications to the History of England. Doubts concerning the Introduction of the Feudal Law into England. A Solution of them. Of Fiefs under William the Norman. A Distinction concerning their Condition in the Anglo-Saxon and the Anglo-Norman Times. The repeated Demands for the Revival of the Laws of Edward the Confessor. An Explanation of this Difficulty. The Introduction of Knight-service into England. Of the Number of Knight-fees there.

I HAVE endeavoured to investigate the rise and nature of the feudal grant, and the varying spirit of the feudal association; I have attempted to distinguish the chivalry of arms, and the chivalry of tenure; and, I have ventured to open up the origin of knight-service, which was to place the feudal institutions in their last, and most interesting situation. It is now fit

I should mark the different periods in the progression of fiefs, express, in one view, their birth, growth, and maturity, and enter into applications of the reasonings I have made. The use of my principles will thus be confirmed. And, in performing this task, I foresee I must also meet with errors and prejudices, which the talents of ingenious men have consecrated; but of which, it is the tendency to load history with difficulties, and to perplex science with doubt.

In the manners of the antient Germans, I have found the source and spirit of the feudal laws. To these, the grant of land under military service has a certain and decisive reference. Its appearance, at the will or pleasure of the grantor, was even a consequence of the limited ideas of property, and of the forms and regulations which directed the condition of land while these nations remained in their woods. They could have no conception, on their conquests, of a gift of land in perpetuity; because, of such gifts they had no knowledge. The object of the grants then made, was military service; their duration was the pleasure of the grantor; and the spreading of such donations through the different orders of the state, from the sovereign to the chiefs, and from the chiefs to the retainers, connected together the inhabitants of a kingdom.

But

But the new situation of the barbarians on their settlements, and the natural advancement of manners, were to communicate to them ideas of property. Their continued occupation of allodial lands, exhibiting the uses and conveniences of a permanent possession, established the notion of it. They perceived, by comparison, the disadvantages of the lands under military service, which were revokable at the call of the donor. A year, therefore, and then the life of the vassal, became the terms of the enjoyment of these gifts (1). They grew to be successive. The rights of the father were to be respected, and his services to be remembered in his posterity. And, in this condition of them, the superior might choose, out of the family of the feudatory, the son the most valiant, and the most acceptable to him (2). The perpetuity of the grant was next to be understood. The prior readiness and capacity of the eldest son to do its duties, were to establish primogeniture and hereditary succession. And the firm connection of the property in the descendants and blood of the proprietor, had produced an interest in the daughter, and, on the failure of male heirs, made the land inheritable to women.

During all this progress, the term *benefice*, and, during a part of it, the term *sief*, were to express these donations. Even after the grants of land had become hereditary, they were to continue to express them. These names, of consequence, have a reference to the same customs and the same institutions.

There

There are yet authors, who affirm that the *benefice* and the *sief* were different ; and, when they only mean, that the *benefice* denoted the grant in its state of fluctuation, and the *sief* its condition of perpetuity, their distinction is frigid ; for these were steps in the progression of the same law. But, in another aspect, their distinction is a mark of a more censurable inattention ; for they ought to have known, that authentic monuments of history have repeated examples of the use of *benefice* and *sief* in expressing a gift of land under military service, and under a hereditary right (3).

There are writers more deceitful than these, who are not afraid to contend, that the *benefice* was *allodiality*, or the land which was free and capable of alienation. The proofs, however, which evince the connection between the words *benefice* and *sief* destroy this notion ; and there are laws and records of the barbarians which make an actual distinction between the allodial and the beneficiary lands, which allude to the extensive condition of the former, and the unalienable state and the military service of the latter (4).

From the grant at discretion to the hereditary estate, beneficiaries or fiefs were to know the rites of homage and fealty. For the vassal, from the moment of his admission to the protection of the superior, was to make an acknowledgement of his submission and respect, and to give an assurance of his service and fidelity.

fidelity. He was also to be subject to the feudal incidents or casualties. For, from the earliest times of the feudal grants, the superior was to find it necessary to educate in his hall the expectants of his fiefs, or his future vassals. To this care he was even to be led oftner, and with greater attention, when the fief was precarious, and for life, than when it was to pass down in succession; and the law, and not his choice, was to point out to him the infant heir. In every period of the advancement of the fief, the superior was to receive a present or relief on the grant of his land; he was to have a concern in the marriage of his vassal; he was to be assisted by his bounty or aid; and, on his delinquence, he was to revoke or take back the donation (5.)

There are writers, notwithstanding, of distinguished penetration, and of extensive learning, who are confident and certain that these things were the fruits of the *perpetuity* of the fief; and, I am sensible, that the tribe of lawyers, who copy one another from generation to generation, have embalmed this fancy in their systems (6). But it is altogether impossible, that the *perpetuity* of the fief could act in their creation. For, at the period it discovered itself, the feudal association had lost its cordiality. The superior and the vassal were in a state of hostility; and, in this situation, a train of rites and incidents could not possibly be created, which suppose protection and reverence, generosity and friendship. These rites and incidents were to distinguish those early and fortunate periods,

periods, when the interests of the superior and the vassal were the same, and their passions mutual ; and, though they preserved their existence down to melancholy times, and were to act as causes of oppression, they had yet fostered the noblest principles of our nature. After throwing a lustre on human affairs in one condition of manners, they were to degrade them in another. They were to feel the influence of refinement and selfishness ; and, in this last situation, the perpetuity of the fief, which these writers consider as their source, was to add a regularity to their appearance, and to encourage their severity.

From the conquests of the barbarians, till the ninth century, fiefs were in their state of fluctuation. It was about the year 877 (7) that the perpetuity of the fief was established in France. And it was known in every country of Europe in the commencement of the tenth century.

The tenure of knight-service was soon to follow the perpetuity of the fief, and was connected with it. There is, accordingly, an instance of a knight-fee in the 880 (8). In the reign of Hugh Capet, who was raised to the throne in the year 987, this tenure extended itself over France ; and, after having appeared in other nations of Europe, it was introduced into England. But, in this last country, there are peculiarities concerning the beginnings and the progress of fiefs, which have been the subject of fruitless inquiries and conjectures. I must not, therefore,

force, pass them over in silence. If my principles are just, they ought to dissipate the darkness which covers a portion of our history so memorable and so important.

Many learned writers are positive, that the Anglo-Saxons were strangers to fiefs, and that these were introduced into England by William Duke of Normandy (9). There are writers not less learned, who affirm, that fiefs were not introduced into England by the Duke of Normandy, but prevailed among the Anglo-Saxons in the condition in which they were known under William (10). Great men range themselves on each side of the question, and I will not detract from their merits. But, it will be permitted to me to express my sentiments.

It cannot be true, that the Saxons, who settled in England, were strangers to fiefs. For, in this case, they must have renounced the manners to which they had been accustomed in Germany. They must have yielded to views different from all the other Gothic tribes who made conquests. They must have adopted new and peculiar customs. And history has not remarked these deviations and this dissimilarity.

It cannot be true, that William the Norman introduced fiefs into England. The introduction of a system so repugnant to all the institutions which usually govern men; which was to force into an uncommon direction both government and property;

which was to hold out new maxims in public and in private life ; which was to affect, in a particular manner, inheritance and estates ; to give a peculiar form to justice and courts ; to change the royal palace, and the households of gentlemen ; to overturn whatever was fixed and established in customs and usages ; to innovate all the natural modes of thinking and of acting ; could not possibly be the operation of one man, and of one reign.

Let us not be deceived by names and by authorities. Fiefs were to run the same career in England which they had experienced in the other countries of Europe. They were to be at pleasure and annual, for life, a series of years, and in perpetuity ; and, in all these varieties, they were to be exhibited in the Anglo-Saxon period of our story. The hereditary grant, as well as the grant in its preceding fluctuations, was known to our Saxon ancestors. Of this, the conformity of manners which must necessarily have prevailed between the Saxons, and all the other conquering tribes of the barbarians, is a most powerful, and a satisfactory argument. Nor is it single and unsupported. History and law come in aid to analogy ; and these things are proved by the spirit and text of the Anglo-Saxons laws, and by actual grants of hereditary estates under military service (11).

It is, at the same time, not less true, that the state of fiefs in England, under William the Norman, differed most essentially from

from their condition among the Anglo-Saxons. The writers, therefore, who contend that they existed in the ages previous to Duke William, in the same form in which they appeared after his advancement to the crown, are mistaken. For, under the Anglo-Saxon princes, no mention is made of those feudal *severities* which were to shake the throne under William and his successors. Yet fiefs, under the Anglo-Saxons, in every step of their progression, must have been connected with those feudal *incidents* which were the sources of these severities.

This difficulty, which, on a slight observation, appears to be inexplicable, will yield to my principles. The varying spirit of the feudal association, which I have been careful to remark, accounts for it in a manner the most easy and the most natural. When the superior and the vassal were friends, and their connection was warm and generous, the feudal incidents were acts of cordiality and affection. When they were enemies, and their connection was preserved, not by the commerce of the passions and the heart, but merely by the tie of land, the feudal incidents were acts of oppression and severity. During the Anglo-Saxon times, the affectionate state of the feudal association prevailed. During the times of Duke William, and his immediate successors, their hostile condition was experienced. Hence the mildness and happiness of our Saxon ancestors; hence the complaints and grievances of our Norman progenitors.

This solution of a difficulty, which has been a fruitful source of mistake, is strongly confirmed by a peculiarity which I am now to mention, and which, in its turn, is to lead to the explication of a problem that has been alike perplexing to our antiquaries and historians.

It was from Duke William, down to King John, that the people of England were to complain loudly of the feudal severities ; and, during this long period of outrage and lamentation, it was their incessant desire, that the laws of Edward the Confessor should be restored. It is, therefore, beyond all doubt, that the feudal severities were not heard of during the times of King Edward. The superior and the vassal were then cordial and happy in each other. The feudal incidents were then expressions of generosity and attachment.

But Duke William, who was to acknowledge, by his laws, the freedom of the English government, which he was to insult by his administration, enacted, that the possessors of land should not be harassed with unjust *exactions* and *talloges* (12). He thus promised an alleviation of the feudal severities. And, what seems constantly to have attended this promise, he formally restored and confirmed the laws of the Confessor (13). In allusion to the same severities, William Rufus engaged to abstain from illegal aids and oppressions ; and, in reference to the same customs of the Confessor, he became bound to govern by mild and sanctified

sanctified laws (14). Henry I. executed a celebrated charter, which contained direct mitigations of the feudal incidents, and he expressly restored and confirmed the laws of King Edward (15). Stephen gave a charter of liberties to the barons and people; and it was its purpose to bestow his sanction on the grant of Henry, and to confirm the good laws and customs of the Confessor (16). With the same intentions, a charter of liberties was framed and granted by Henry II. (17).

These grants, though invaluable as ample and decisive testimonials of our antient liberties, by their perpetual and anxious retrospection to the Saxon times, could not be carried into execution, and maintained in the purity of their intentions. The altered condition of manners, and of the feudal association, did not permit their exercise. Notwithstanding the high and independent spirit of the English nation, which occasioned these grants, the feudal severities were to continue. They prevailed under Duke William, under Rufus, under Henry I. under Stephen, and under Henry II. They were known under Richard I. And, in the age of King John, they became so exorbitant and so wild, from the eccentric and thoughtless nature of this capricious and despicable prince, that the barons and the people confederated to vindicate their liberties, and produced the *magna charta*, which, while it offered a limitation of the feudal rigours, was to be declaratory of the constitutional freedom that had distinguished this fortunate island from the earliest times (18).

This

This constant connection of the complaints of the feudal severities, and the revival of the laws and customs of the Confessor, from the age of Duke William to King John, is a most remarkable and important peculiarity. ‘What these laws were, of ‘Edward the Confessor,’ says Mr Hume, ‘which the English, ‘every reign, during a century and a half, desired so passionately to have restored, is much disputed by antiquarians; and our ‘ignorance of them seems one of the greatest defects in the ancient English history (19).’

The train of thinking into which I have fallen, points, with an indubitable clearness, to the explanation of this mystery. By the laws or customs of the Confessor, that condition of felicity was expressed, which had been enjoyed during the Anglo-Saxon times, while the feudal incidents were expressions of generosity and friendship. These incidents, in the fortunate state of the feudal association, acting alike to public and private happiness, produced that equal and affectionate intercourse, of which the memory was to continue so long, and the revival to create such struggles. It was the cordiality, the equality, and the independence of this society and communication, which are figured by the laws or customs of the Confessor, and which made them the fond objects of such lasting admiration, and such ardent wishes (20).

But, while the times of Duke William and his successors were discriminated from those of the Confessor and the Anglo-Saxon princes, by the different states they displayed of the feudal association, there is another circumstance in the progress of fiefs, by which they were to be distinguished more obviously.

Knight-service, which, in France, and in the other kingdoms of Europe, was introduced in the gentle gradation of manners, was about to be discovered in England, after the same manner, when the battle of Hastings facilitated the advancement of William the Norman to the crown of the Confessor. The situation of the Anglo-Saxons in an island, and the Danish invasions, had obstructed their refinement. In the memorable year 1066, when they lost King Edward, and acquired Duke William, they knew the perpetuity of the fief; but they were altogether strangers to knight-service and a knight's fee. The duchy of Normandy, when granted to Rollo by Charles the Simple, in the year 912, had yet experienced all the vicissitudes of fiefs. And William, being the sixth prince in the duchy, was familiar with the most extended ideas of the feudal system. These he brought with him into England, and they were to govern and direct his conduct.

The followers of Harold having forfeited their estates, they reverted to the crown. An immense number of lordships and manours being thus in the disposal of William, he naturally gave

gave them out after the forms of Normandy. Each grant, whether to a baron or a gentleman, was computed at so many fees; and each fee gave the service of a knight. To the old beneficiary tenants, he was to renew their grants under this tenure. By degrees, all the military lands of the kingdom were to submit to it. And, with a view, doubtless, to this extension, the book of Domesday was undertaken, which was to contain an exact state of all the landed property in the kingdom. Instead, therefore, of bringing fiefs into England, this prince was only to introduce the last step of their progress, the invention of the knight's fee, or the tenure of knight-service.

In fact, it is to be seen by his laws, that he introduced *knight-service*, and not *fiefs*. Nor let it be fancied, that this improvement was made by his single authority and the power of the sword. His laws not only express its enactment in his reign, but mention that it was sanctioned with the consent of the common council of the nation. It was an act of parliament, and not the will of a despot, that gave it validity and establishment (21).

The measure, it is to be conceived, was even highly acceptable to all orders of men. For, a few only of the benefices of the Anglo-Saxon prince being in perpetuity, the greatest proportion of the beneficiary or feudal tenants must have enjoyed their lands during life, or to a series of heirs. Now, the advancement

vancement of such grants into hereditary fiefs, under knight-service, was an important advantage and acquisition. While it operated to the convenience and the grandeur of the sovereign, it bettered the property, and secured the independence of the subject.

But, while it is to be thought, that knight-service was introduced into England in the times of Duke William, and extended over it to a considerable degree, it is not, I believe, to be found with certainty, how many fees or knight-services were created in his reign. Ordericus Vitalis has, indeed, affirmed, that William created sixty thousand knight services or fees (22). But a very different state of this matter is given by Alexander, Archdeacon of Shrewsbury, a diligent officer of the exchequer, in the days of Richard I. King John, and Henry III. He mentions it as a tradition in his day, that, under Duke William, the number of fees in England amounted only to thirty-two thousand. Of this, however, he could find no proof in any record (23). The discrepancy between this report, and the testimony of Ordericus Vitalis, is so great, that no reliance is to be given to either of them. And, though Mr Madox, Mr Hume, Sir William Blackstone, and many writers, are disposed to adopt the relation of the latter, there seems not any convincing reason in its favour. For, independent of the tradition of the Archdeacon of Shrewsbury, which affects it so violently, it is observable, that the knight-fees must have been in a state of constant fluctua-

tion under Duke William ; and that, in the darkness of time, it is impossible to find out the number of the last fee which was granted by him. The fluctuation in the number of fees continued also under his immediate successors. For, it was not till about the end of the reign of Henry II. that all the allodial property of England was converted into tenure (24). And, from the administration of William till this period, there must have been a gradual augmentation of the fees and the knights.

It may now be a speculation, neither incurious nor unuseful, to attend to fiefs in the state of their completion, and to remark the military power they established.

C H A P-

C H A P T E R III.

Of the Military Power of a Feudal Kingdom.

S E C T I O N I.

An Idea of the Feudal Militia.

WHEN the feudal association was cordial, there existed no necessity for the knight's fee. The vassals of a chief gave with pleasure their assistance. When this association was discordant, different interests actuating the superior and the vassal, art and policy were to prescribe the exact service to be performed. Nothing was to be left to friendship and cordiality. A rule, certain and definite, pointed out the duties of the vassal. This rule was the tenure of knight-service.

A duchy, barony, or earldom, were the estates possessed by the nobles; and, being divided into fees, each of these was to sup-

ply its knight. A tenant of the crown, who was not created into nobility, but enjoyed a grant of land, furnished also his knights in proportion to his fees. The nobles and the gentry of a feudal kingdom were thus its defenders and guardians. And they granted out territory to persons inferior to them in the divisions of fees, and under the burden of knights. In proportion, therefore, to the extent of its lands, there was, in every feudal state, an army, or a body of militia, for its support and protection.

But, while a force, numerous and sufficient, was, in this manner, created, a care was also bestowed to hold it in readiness to take the field. The knights, who were to appear in proportion to the fees of each estate, were bound to assemble at a call, in complete armour, and in a state for action (1). The feudal militia, of consequence, could be marched, with expedition, to defend the rights of its nation, to support its honour, or to spread its renown.

The usual arms of a knight were the shield and helmet, the coat of mail, the sword, or the lance (2). It was, also, his duty to have a horse. For, a growing luxury, and the passion for show, encouraged by tournaments, had brought discredit to the infantry, which had distinguished the barbarians in their original feats, and facilitated their victories over the Romans (3). The horsemen were called the *battle*, and the success of every engagement

gagement was supposed to depend upon them. No proprietor of a fee, no tenant by knight-service, fought on foot. The infantry consisted of men, furnished by the villages and the towns in the demesnes of the prince or the nobles. The bow and the sling were the arms of these; and though, at first, of little consideration, they were to grow more formidable (4).

During the warmth of the feudal association, the military service of the vassal was every moment in the command of the superior. When their association was decayed, it was not to be depended on, and, when afforded, was without zeal, and without advantage. The invention of knight-service, which was to recover, in some degree, the vigour of this connection, while it ascertained the exact duty to be rendered, was to fix its duration. Each possessor of a fee was, at his own expence, to keep himself in the field during *forty days* (5). To this obligation, the great vassals of the crown were bound, and inferior proprietors were to submit to it. When a single battle was commonly to decide the fates and the disputes of nations, this portion of time was considerable and important. And, if any expediency demanded a longer duty, the prince might retain his troops, but under the condition of giving them pay for their extraordinary service (6).

Such was the military system which, during a long period of time, was to uphold the power of the monarchies of Europe; a system,

system, of which it was the admirable consequence, that those who were the proprietors of the land of a kingdom, were to defend it. They were the most interested in its welfare and tranquillity ; and, while they were naturally disposed to act with union and firmness, against a foreign enemy, they were induced not less strongly to guard against domestic tyranny. Their interest and happiness, their pleasure and convenience, urged them equally to oppose invasions from abroad, intestine commotions, and the stretches of prerogative. A strength, so natural, and which could never be exhausted ; a strength, in which the prince was to have less authority than the nobles, and in which the power of both was checked by the numerous class of inferior proprietors ; a strength, which had directly in view the preservation of civil liberty, seems, on a slight observation, the perfection of military discipline.

But, with all its appearance of advantage, this scheme of an army was incompatible with refining manners ; and, in pointing out the causes of its weakness, we may see the symptoms of refinement they are to exhibit. A double curiosity is thus to console with its charms the anxiety of inquiries that are irksome.

S E C T I O N II.

The Inefficacy of the Feudal Militia. The Fractions of a Fee. Its Members. Attempts to escape out of the Bondage of Fiefs. The Fine of Alienation. Substitutions of Service. Commutations of Service for Money. The Fine for the Neglect of Service. The Tenure of Escuage. The Rise of Stipendiaries, and the Necessities of Princes. Devices and Frauds to prevent the Service of Knights, and the Payments of Escuage. The Rise of Commerce.

THE portion of land termed a *fee*, which was the foundation of knight-service, and on which there rose the mighty fabric of the feudal strength, was no sooner invented than it was to suffer. In the frittering down of feudal property by infeudations, the practice prevailed of dividing even a fee. Thus, there were some vassals who possessed the half of a knight's fee. There were others, who had the third, the fourth, or the fifth parts of a fee. Fractions of a fee, even to the thirtieth and the fortieth parts, were not uncommon (1). These particulars, so perplexing to the historians of modern times, seem

incon-

inconsistent with the views of knight-service, and require to be explained.

A fee could properly be divided into eight portions, and these were said to be its *members*. They received this appellation, because their proprietors were bound to perform the military service, or the original purpose of the grant. All divisions beyond these portions were improper; and their possessors, not being members of the fee, were to perform no service. The question still recurs, how the members of the fee, or the proprietors of the eight portions, were to perform the service of a knight? After the invention of knight-service, the usual term that the militia were to remain in the field was forty days. The eighth part of a fee, by this rule, gave a title to the eighth part of the service of a knight. Its proprietor, of consequence, took the field for five days, which was his proportion of the stipulated service of the fee for forty days. The possessor of the half of a knight's fee was thus to give his attendance for twenty days: And, in this manner, the other members of the fee were to a&t (2).

The members of the fee had each the privileges of a manour, that is, jurisdiction, court, and usage. Hence the multiplication, of old, of little manours. The proprietors of fractions, who were not members of the fee, had not the privileges of manours, but paid suit and attendance at the courts of the county or can-
ton.

ton. The former were included in the system of fiefs; the latter were thrown out of it, and their number was equally promoted by the anxious fondness of a father, who would provide for all his children, and by the ruinous prodigality of a spend-thrift, who would relieve his necessities.

The fractions which were members of the fee, were to be a shock to the feudal militia, by disposing to different persons, the service which a single individual could perform with greater skill and address. They were to be a source of weakness and disorder. The fractions which were not members of the fee, were to hasten the period of the alienation of property.

Amidst the wants created by society and intercourse, by ambition and pleasure, the vassal, who held from the crown many fees under knight-service, found it necessary, at times, to obtain from his prince the licence to let out a portion of them under a farm-rent, and not subject to military service, nor to homage, wardship, relief, and the other feudal incidents (3). The land he retained was sufficient to produce the number of knights which were required from him. No immediate prejudice was supposed to be done to the power of the sovereign, or to the militia. And thus, entire fees, and great proportions of territory, were to escape out of the magic circle of feudal ty. They were to pass from chivalry and tenure, to be subject to profits or pre-stations by the year. Licenfes from vassals to their feudatories,

created also these conversions of fees into property. As deviations from a system, they mark its decline ; as attentions to property, they express the propensity to refinement and commercial manners.

Leases, in this form, were even to be made without the knowledge of superiors. The interest of the vassal in the estate, so much greater and more intimate than that of the lord, was to carry him still farther. Retaining a sufficiency of land for the knights he was to furnish, he was to venture on the sale of particular fees. Encroachments made with this precaution, were to lead to encroachments more extravagant. Sales were to take place, without the reservation of a property equal to the military service to be performed by the vender. The attention of the lord was thus called forcibly to the acts of his vassal. Consulting his interest and importance, he would permit of no sales that had not the sanction of his consent. The usages and doctrines of fiefs were in his favour. It was expedient for the necessitous vassal to act with his approbation. A bribe came to soften the severity of the lord. The *fine* of *alienation* was established. On the payment of this fine, the vassal might sell and barter, not only a portion of his fees, but the whole of them (4).

These peculiarities had power of themselves to destroy the feudal militia. But other causes were to concur with them.

Men

Men of rank and fortune were to yield to an increasing luxury. The love of ease made them wish an exemption from service, and their pride produced a dislike to the mandate of a superior. The substitution of persons to perform their duties, of which the idea was first suggested by the sickness of vassals, and then familiar from the grants of fees to ecclesiastics, and their devolution to women, became a flattering expedient to the rich and the luxurious (5). The prince could not depend on the personal attendance of the nobles and the tenants *in capite*. Persons, hired with a price or a pension, were often to discharge their offices, and to disgust troops, who were to submit reluctantly to their command.

Substitutions of this sort, however, though they came to be very common were a matter of delicacy and attention. For the condition of society in the feudal ages permitted not, at all times, the wealthy and the noble to delegate the authority over their vassals. But, when in a situation so critical, they were not without resources.

It had been usual, from the earliest times, for the superior to levy a fine from the military tenant who refused to take the field at his summons (6). This suggested, very naturally, the commutation of service for money. A new method of tenure was thus to arise. The vassal by knight-service might convert his holding into the tenure of *eccluse*, which, instead of exacting

knights for the fees of his estate, required him to make payments to the exchequer of his prince (7).

While this aversion from service was to prevail, troops were yet to be necessary. The fine, accordingly, which the sovereign demanded from the vasal who neglected to perform his duty, the payments he received by agreement from the tenants by es-cuage, and his interest to supply the attendance of both, were to produce, in every country of Europe, a multitude of *slipendaries*.

These forces were a mixture of all nations, and consisted of men, whom poverty and debauchery had corrupted into wretchedness. They had no solicitude what cause they were to defend ; and their convenient swords obeyed, at all times, the donatives of princes. They were called *coterelli*, from the hangers they wore, *ruptarii*, from the pay they received, and many of them being of the country of Brabant, the term *Brabangons*, or *Brabantini*, came to express them (8).

The introduction of these banditti into a feudal army, was the utmost violence to its nature. It offended infinitely the barons and the military tenants, that they should be called to mingle with persons so ignoble. Yet, the princes of Europe, finding the advantages of troops whom they could command to their purposes, and march at their will, were disposed to encourage them.

them. They perceived, that they could possess no power without mercenaries; and no mercenaries were to be had without money. Hence the passion for wealth they were to discover; hence their ruinous projects to acquire it.

But, while the struggles for money, thus created, were to produce consequences distant and important, they served to destroy altogether the purposes of knight-service. They gave a mortal stab to the feudal militia. The feudal association was to be foul with disgusts, oppressions, and disorders. Time, and the devices of art, augmented the general confusion. The barons and tenants *in capite* by knight-service, when summoned to take arms, were often to dispute the number of their fees, and the knights they should furnish. The tenants by escuage made proffers of the half or the third of the payments to which they were bound. The constables and the marshals of armies were ill qualified to decide concerning matters, so delicate in their own nature, and in which an impropriety of conduct might be a prejudice to their sovereigns. Doubts were to arise, not only about the fees or the knights of estates, but about the tenure by which they were held (9). The clergy were to invent, and to encourage frauds. They taught the laity to convey to them their feudal possessions, and to receive them back as property. The fees in their own enjoyment they affected to hold in frankalmoigne, or by a tenure that gave no service but prayers (10). The subdivisions of knight-fees created perplexities that were intricate in no com-

mon degree. Fines or payments were often to be demanded, not only for the fractions which were members of the fee, but for fractions which were not members (11). The consultation of rolls and records, inquisitions by jurors, and the examination of witnesses or evidence, required a length of time, and a trial of patience, and were not to be always satisfactory. The sovereign, in the mean time, was in haste to march against an enemy. And he felt his weakness in the diminished ranks of his army, in the abstractions of his revenue, in the turbulent service of the great vassals who obeyed his summons, in the coldness of those who acted as substitutes, in the total want of discipline and of military knowledge in inferior orders, and in the limited time which the troops were to remain in the field.

To all these causes, the rise of commerce is to be added. Its various pursuits, and its endless occupations, were to actuate the middle, and the lowest classes of men, and to give the killing blow to a system, of which the ruins and decline have an interest and importance that bring back to the memory its magnificence and grandeur.

C H A P T E R IV.

The Fall of Chivalry as a Military Establishment. The Knights of Honour lose their Consideration. Their Numbers and Venality. Wealth becomes a more solid Title to Knighthood than personal Merit. This Dignity is connected with the Possession of a Fee. It ceases to be Honourable, and is made a Subject of Compulsion. Fines for the Exemption from Knighthood. The antient Chivalry disappears on the Rise of Regular Armies.

ALL the splendour and advantages of the antient chivalry could not uphold the feudal militia. The dubbed knight, or the knight of honour, was to fall with the mere military tenant, or the knight of tenure. Chivalry was to decay as well as knight-service. When they ceased to give a mutual aid and support, they were soon to operate in a contrary direction, and to promote the decline of each other.

In the order of dubbed knights, there were necessarily a multitude of warriours, whose military renown had chiefly entitled them to the investiture of arms, and whose accomplishments were

were greater than their fortunes. Their knowledge in war, and the rank to which they were advanced by the ceremonial of knighthood, gave them the capacity of acting in all stations. Their poverty, splendid, but inconvenient, made them attach themselves, in a more particular manner, to princes and nobles (1). From these they received pensions, and, in the households of these, they enjoyed and sustained honours and offices. Men of rank were to vie with one another in their numbers and attachment. They became a part of the garniture, the magnificence, and the pride of nobility (2).

There were thus, in the declension of the feudal army, a society of men, who could supply the personal service and attendance of the luxurious and the great. A substitution of knights, in the place of the barons and vassals of the crown, was thence to prevail very generally. And, while knights were, in this manner, to wound deeply the military discipline and arrangements, they were to throw a contempt on knighthood by their numbers and venality. The change of manners, and the uses of wealth, had tarnished the lustre and the glories of the antient chivalry.

In the state of its degradation, the long and hard apprenticeship to arms which, of old, had prepared the candidate for the struggles and the cares of knighthood, was forgotten. The possession of a portion of land was to be sufficient to give a title to this

this dignity. It was annexed to a knight's fee. The unaccomplished proprietor of a few acres was to be adorned with the sword, and to be admitted to the ceremonies of knighthood. But he could not hold its honours. They had passed away for ever. The order, which had ennobled kings, and greatness, supreme power, and the loftiest acquirements, grew to be mean and trivial.

The aspiring and the meritorious who, of old, courted and expected knighthood, with the most passionate ardour and the fondest hope, were now to avoid it with anxiety, and to receive it with disgust. An unhappy exertion of prerogative was to add to its humiliation. Princes, to uphold their armies, were to issue frequent proclamations, which required all the military tenants of the crown to appear before them on a certain day, and to be girt with the belt of knighthood (3). Having ceased to be an object of choice, it was to be made a subject of compulsion. A single knight's fee held of the crown, being deemed an ample enough fortune to entitle to knighthood, its possessor, if unwilling to accept this dignity, was compelled to receive it (4). Senility, irrecoverable weakness, and loss of limbs, were the only excuses to be admitted for his refusal. If he had not these reasons to plead, and neglected to take the honour of knighthood, his estate was distrained by the officers of the revenue (5). Men were to buy, as a privilege, a respite and an exemption from

knighthood; and princes, when they could not recover their armies, were to fill their exchequers (6).

In a condition, not merely of meanness, but of disgrace and calamity, the antient chivalry could not exist long. It was worn out to extremity; and the military and regular establishments to which the defects of the feudal arrangements pointed so strongly, were to supersede its uses and advantages. It did not die, as so many writers have fancied, of the ridicule of Cervantes, but of old age, despondence, and debility.

C H A P-

C H A P T E R V.

The Military Arrangements which prevailed in the Declension of Feuds and Chivalry. The Introduction of standing Armies.

S E C T I O N I.

Of Mercenaries. The Evils which result from them. The Rise of Taxations.

THE mercenaries, which were made necessary by the disorders of fiefs and chivalry, were to lead to misfortune and misery. They were scarcely known, when the princes of Europe invented the art of extorting the wealth of their subjects, and of employing it to oppress them. While the lands dealt out by the crown created an effectual army, soldiers gave their service for their possessions. But, when the inconveniences and the defects of this system had produced mercenaries,

the prince had no possessions to bestow. His domains had gone away from him in prodigalities and donations. It was yet incumbent on him to maintain his troops. Money was absolutely indispensable to him, and he was to find out measures to procure it. These measures are interesting in themselves, and still more so in their consequences. They gave rise to taxations in Europe.

The vassals of the crown by knight-service were obliged to personal attendance in wars ; but, considering it as a burden, were disposed to compound for it. This was also the case with the inferior tenants. They were no less inclined to contribute their proportions to their lords, than these were to satisfy their prince. To the prince, the money of his vassals was of more advantage than their service ; but agreements with each were fatiguing and endless ; and his mercenaries were clamorous and impatient.

An expedient presented itself, which, to all parties, gave the promise of ease and satisfaction. The prince, instead of the service that was due, and, instead of contracting with every tenant who held from him, assedged a moderate sum on every knight's fee throughout the kingdom (1). It was just that his tenants should give a fine for their attendance ; and what they furnished was to go to his mercenaries.

The

'The prerogative thus begun, was pregnant with misfortunes to subjects, and with advantages to princes, which were foreseen neither by the former, nor the latter. What, at first, was a matter of expediency, and an expression of the confidence of the people, and of the discretion of the sovereign, grew into a most formidable taxation (2). It was to be exerted with no moderation or decency. In the delirium of their greatness, the princes of Europe were to fancy, that, in extracting money from their subjects, they ought to know no rule but their ambition, their wants, and their caprice.

In a conformity with the assessment on the estates subject to knight-service, a tax was to be demanded from the possessors of land holden in frankalmoigne and in socage (3). And I have already observed, that the tenants by *escuage* paid a stipulated fine for their fees. All the territory of a kingdom was thus to contribute to the necessities of princes, and the greatest proportion of it was to be actually exposed to their ravages.

Their rapacity was not yet to be satisfied. The cravings of ambition, and the prodigalities of mercenaries, demanded something more. During the fortunate times of the feudal association, it had been common for the inhabitants of the cities and towns within the demesnes of the sovereign, and within those of the nobility, to express, respectively, by presents, their subordination, satisfaction, and gratitude. In more unhappy times, these gifts,

gifts, these fruits of generosity, were demanded as a right. These presents, the expressions of happiness, grew into tallages and exactions, and were to denote misery and wretchedness. The prince, with an unblushing audacity, levied grants at his will from his cities and towns; and his example was followed by the nobles within the cities and towns within their territories. Hence the most destructive and the most calamitous of all the oppressions of the middle times (4).

Measures, so hostile to the free spirit of the Gothic governments, infringements of property so audacious, were every where to excite and to inflame the passions of the people. The princes of Europe were to contend for power, and their subjects for liberty. Struggles, the most critical and the most serious, were sustained; and the progress of these, and the respective success of the parties in the different kingdoms of Europe, were to alter its governments to the forms they maintain at this hour.

In France, and in other countries, the command of the mercenaries, and the power of taxation, were finally to prevail. In England, the frantic weaknesses of King John, and the union of the nobles and the people, were to renovate the Gothic liberty, and to set limits to princes. While, in states less fortunate, the kingly authority was to grow into despotism, and to debase the genius of men, while taxes, and tallages, and exactions, were to be demanded in wantonness and caprice, and a cruel tyranny

to diffuse oppression and grievance, the *magna charta* was to command, that no prince of England should presume to levy any tax, tallage, or exaction, without the consent of the parliament (5); and that, while the land of the kingdom was to be free from his rapaciousness, he should not dare to harass its cities or towns, but that they should return to the possession and enjoyment of their *antient* liberties (6).

The disorders of the feudal militia produced mercenaries, and the use of mercenaries gave birth to taxations. Taxations were begun to be levied, in all the states of Europe, at the will of the prince. This occasioned contentions between sovereigns and their subjects. The victory of the kingly authority over the liberty of the people, continued in many princes the power of taxation; and this power, and the command of mercenaries, are the completion of despotism. In England, the prerogative of taxation which the prince had assumed, was wrested from him by the great charter of liberties. He was to command his mercenaries; but he was to depend for their support and their pay on the generosity of his people.

S E C T I O N II.

The Difference between a Mercenary Soldier and a Feudal Vassal.

Sovereigns find Troops by entering into Contracts with their Nobility, and with Captains by Profession. Volunteers make an Offer of their Service. Commissions of Array. The Disadvantages of these Military Schemes. The Idea and Establishment of a Standing Force. France, and other Nations, lose their Liberties. The Opposition to a Standing Force in England. The total Abolition of Fiefs. The consequent Necessity of a Standing Army. The Precautions and Anxiety with which it is introduced.

THE Coterelli, or banditti who wandered over Europe, and offered their swords to the highest bidder, introduced the idea that war might be considered as a trade. The feudal proprietor fought for his land and his nation, and the prince had no title to demand his service in any dispute of his own. He drew his sword for the safety of the state, or for its honour; but he was not bound to support the quarrels of his sovereign. When the feudal prince contended with a great subject, the feudal

dal vassals of the kingdom did not move indiscriminately to his call. His defenders, in this situation, were his particular vassals, or the tenants of his demesne. In like manner, if he declared war against a foreign state, without the content of the great council of the nation, the majority of the feudal vassals might refuse to obey his mandate. It was only in the wars, and in the quarrels approved by the nation, that they attended to his summons (1). But, when arms became a profession, the soldier stipulated his service for his pay. He consulted not for what end he was to fight. An implicit obedience was required from him ; and his sword, though it might be employed against a natural and an active enemy, might also be turned against his native country, and give a stab to its repose and prosperity.

When, from the refuse or the vagabonds of Europe, the taking money for service was become familiar, the making war a traffic prevailed in every state. The idle and the profligate found a way of life, which flattered their indolence and rapacity. The usual method of collecting an army, was now by contracts with nobles, who had authority over the loose and disorderly inhabitants of their estates ; with captains, whose address or valour could allure adventurers to their standards ; and with individuals, whose poverty or choice made them offer themselves to the constables and the marshals of princes. These troops, though more obedient than the Gothic militia, were not much superior to them in discipline. For, at the end of every war,

the prince, on whom they depended for pay, was in haste to disband them (2).

But, while this grew to be the usual method of raising an army, it was a law in the different nations of Europe, that all the subjects of a kingdom were bound to take arms in cases of necessity. Statutes, accordingly, or ordinances, ascertained the armour with which every person, in proportion to his riches and rank, was to provide himself, and which he was to keep constantly in his possession (3). And thus, when dangers threatened, and sudden invasions took place, commissions of array were issued by princes, and supplies to the army called out from the provinces and counties, the villages and cities (4). The soldiers, levied in this manner, received also the pay of the prince.

These schemes for a military power were still imperfect. The oppression of arrays was disgusting and cruel in the highest degree; and the troops they furnished were ill disposed to exert themselves, and without discipline. Mercenaries were the strength of armies; but, to collect such multitudes of them as were requisite for great and vigorous efforts, required an inexhaustible revenue. They had, besides, no principle of attachment or of honour. An object of terror to the people, and of suspicion to the prince, they were employed and detested; and when the termination of a war set them loose, the condition of Europe was deformed, and the greatest disorders were perpetrated.

trated. They had no certain homes, and no regular plan of subsistence. They were at the command of the turbulent and factious ; they associated into bands and companies, and were often so formidable as to maintain themselves, for a time, in opposition to the civil authority. Robberies, murders, the ravishment of women, and other atrocious crimes, were frequent (5). The contagiousness of their example, and the enormities they produced, seemed incompatible with the existence of society ; yet their use and their dismission were necessarily, in a great measure, to create this contagiousness and these enormities.

Confusions often lead to improvement, by demanding and pointing out a remedy. It was perceived, that the soldiery ought to be maintained or kept up, not only in times of war, but of peace. They would thus be preserved from marauding, and plunder, and riot ; and, improving in discipline, they would act with greater firmness and efficacy.

The creation of a standing force, of which the idea was thus unfolded, was also facilitated by the rivalry which had prevailed between France and England. From the time that William Duke of Normandy had mounted the throne of England, the two kingdoms entertained a jealousy of one another. The dominions which the English were to possess on the continent, being a source of consideration to them there, became the foundation of disquiets and animosities, which were ready to break

out on occasions the most trifling. Frequent wars putting to trial the strength and resources of the rival states, served to improve them in arts and in arms. Even the victories of Edward III. and Henry V. while they brought so much strength and glory to England, were to be lessons of instruction to the other states of Europe, by discovering the danger which must result to all of them from the encroachments of a power so mighty and so ambitious. The battles of Cressy, Poictiers, and Azincourt, which seemed to bring nothing but honour and advantage to the English, were the prognostics of their humiliation. And, while France was apparently in a state of desperation, it was to recover its importance and grandeur. The maid of Orleans was to astonish with the wildness of her heroism ; Charles VII. was to exert his political sagacity ; Dunois, his military skill. The domestic discords of France were to cease ; and the Duke of Burgundy, perceiving the pernicious consequences of uniting France to England, was to throw off his unnatural connections with the latter, and to sacrifice his animosities to policy. In a word, the foreign dominions of the English were to be ravished from them. And Charles VII. instructed by the past, and apprehensive of future invasions and calamities, was to guard against them by the wisdom and the stability of his precautions.

Thus, the decay of the feudal system, the disorders of the mercenaries, and the political condition of France with regard to
England,

England, all conspired to illustrate the necessity of a standing force.

Having deliberated maturely on the step he was to take, Charles VII. in the year 1445, selecting out of his forces a body of cavalry, to the number of nine thousand, formed them into fifteen regular and standing companies, under officers of experience. Three years after, encouraged by his success, he established a standing infantry of Frank archers, to the number of sixteen thousand (6). The nobility, who had been long tired and disgusted with the fatigues and the returns of military service, to which their tenures subjected them, and the people, who hoped, under disciplined troops, to be free from the insults and oppressions which they had known under the mercenaries, opposed not these establishments. They were struck with the advantages to be derived from them, but discerned not their dangerous and fatal tendency. No constitutional limitations were made; no bulwarks were raised up for the security of the national independence and liberties. Succeeding princes were to add to, and improve on the regulations of Charles; and, from this period, the monarchs of France were to be in the full capacity of levying taxes at their pleasure, and of surveying, in mockery, the rights and pretensions of their subjects.

But, while France and other states of Europe, in consequence of these general reasons, and from the idea of their own interest,
and

and the upholding a balance of power, were to be induced to admit of standing armies, and were thence to lose their liberties, the same causes did not operate the same effects in England. The introduction of a standing army was, indeed, to be made effectual there; but at a very distant period, and on principles the most consistent with liberty. The advantages to accrue from it did not escape observation; but its dangers were still seen in the strongest light; and its establishment was opposed, till the very moment when its necessity was absolute and uncontrollable.

Till the reign of Charles II. the feudal militia, and the troops furnished by contract with nobles and captains, and by the enlisting of volunteers, continued to constitute the usual military power of England. Till the same aera, also, commissions of array were issued by princes to procure forces on extraordinary occasions. And, the termination of every war was regularly followed with the disbandment of the army.

Of these institutions, the inconveniencies, as I have said, were infinite and enormous. They were preferable, however, to a standing army, with despotism. For regulations and policy might, in some degree, supply and alleviate their defects and abuses. The disorders, indeed, of the feudal militia, had risen to a height, which, considering the growing refinement of the nation, admitted not of any remedy. They were to endure, of consequence,

consequence, till the extinction of tenures. But wholesome rules and enactments might deprec or diminish the confusions and the oppressions which were the natural results of the use and dismission of mercenaries; and these were not wanting (7). It was likewise possible to give a check to the violence of princes in the issuing of commissions of array; and the spirit of the constitution, and express laws, made it fully understood, that they ought to be undertaken and executed with the greatest respect for the freedom of the subject, and in cases only of urgent danger and apparent necessity (8).

The reduction of the power of taxation assumed by princes, and the declaration of *magna charta*, that the people were to grant the supplies which they thought necessary to government, had fostered the passion for independence. The constant appeals of the people to charters declaratory of their antient freedom and privileges, and corrective of abuses, that time and the maxims of tyranny had produced, gave them an evident superiority which they might exert in all political contentions. It was easy to discover when the sovereign was disposed to encroach; and the power the commons could oppose to him was decisive. To refuse him money, was to disarm him. Of himself, he could maintain no formidable army; and the people were not to lavish to him their wealth, that he might oppres them.

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The schools of law, which were opened by learned men immediately after the settlement of the charters of liberty, were to diffuse widely the fundamental and free principles of the constitution (9). The discussion of political topics was to employ even the lowest ranks of the citizens, and to engender a turbulence, which, with all its ills, must be allowed to be respectable.

The awe over parliamentary debate, which Richard II. effected by the body of four thousand archers, which he attempted to keep up, and the insolence and disorders of this band, awakened, to an uncommon degree, the public jealousy, and evinced, with decision, the dangers of a standing force (10). The miserable state of France, under the military despotism which Charles VII. had begun, and which Louis XI. had accomplished, was to display, in all its terrors, that mode of administration which allows to the prince the command of the taxes and the army (11).

The English, astonished at the tyranny and pride of kings in other nations, were to repress them in their own. The spirit of opposition to the crown, natural to the government, and brought into exertion by the oppressive views, and the encroaching domination of princes, unfolded all their powers to the commons. During a long series of years, no standing army was permitted. It was held in the utmost detestation ; and its existence was even deemed incompatible with the liberty of the subject.

In

In the wars between the houses of York and Lancaster, armies were frequently raised; but no standing establishment was thought of. The measure was both impolitic and violent, while the leaders of different factions were courting popularity. In the moment of peace, the soldier was lost in the citizen; and the army that conducted its commander to the throne, did not remain with him an instrument of his tyranny. It left him to the enjoyment of the legal rights of sovereignty, and was not to subvert the government. The struggle was not for a tyrant, but a king. The constitution was respected during scenes of violence and hostility, and the people felt a rising importance amidst slaughter and blood.

Henry VII. who united, in his person, the rights of the rival families, was permitted to constitute the yeomen of the guard. But these were only for the protection of the person of the sovereign, and were not to increase to an army. They were to be a state or ornament to the crown, not a terror to the subject. The obstinacy of Charles I. and the civil wars to which it gave rise, were to confirm the antient constitution, and to demonstrate, that neither the military power, nor the power of taxation, were prerogatives of the prince. Years and disorders were to render more solid the fabric of our government.

Yet, after the restoration of Charles II. had taken place, an event of great importance in our history, was to call, in a parti-

cular manner, for the standing force, from which the nation was so averse. The system of tenures, so decayed and so unsuitable to refining times, hastened to extinction. Early in this reign, a statute of infinite utility, gave a mortal blow to military tenures (12). The system of fiefs, so beneficial in one period, and so destructive in another, was overturned. The feudal strength, or militia of England, after languishing for ages in disease and weakness, received the wound of which it perished. In its place a standing army was expedient, and could alone correspond with the majesty of the people and the dignity of the crown.

The invention of cannon and fire-arms had changed the art of war. Movements, evolutions, and exercises, were not to be acquired to perfection by any militia, or even by mercenaries, who were hired for a season, and dismissed at the close of a campaign. Other nations were possessed of standing armies, and of these the force was not to be opposed by troops less regular and less disciplined. Self-preservation, and the necessity of attending to the balance of power in Europe, pointed irresistibly to this establishment. Its dangers, notwithstanding, were great, and might be fatal to the prince who should attempt it.

Invited, or rather compelled, by considerations the most powerful, Charles made the experiment. He ventured to maintain, by his private authority, a standing force of five thousand soldiery, for guards and garrisons. The jealous spirit of the people
was

was alarmed. A measure so unconstitutional, excited fears and apprehensions, which behoved to be consulted. Yet James II. did not scruple to augment the standing force to thirty thousand men, whom he supported from his own civil list. The nation was on the brink of a precipice. The revolution approached. The bill of rights declared, that the sovereign was not to raise or uphold a standing force in times of peace, without the consent of the parliament. And the matured experience of succeeding times, employed itself to devise the policy which was to make our army regular and formidable, with the least possible inconvenience to liberty.

A standing body of troops, as absolutely necessary, is kept up under the command of the crown, but by the authority of the legislature. The power of an act of parliament gives every year its continuance to our army; and any branch of the legislature may annually put a period to its existence, by objecting to it. The dangers of a standing force are thus prevented; its advantages are secured; and the soldiery, not living in camps, but intermingled with the people, are taught, while they respect the crown, to feel for the interests and prosperity of the nation. With these slow degrees, and with these symptoms of jealousy, did a standing army become a part of our constitution.

C H A P T E R VI.

Of Manners and Refinement. The dissolute Conduct of the Women amidst the Decline and Oppressions of Fiefs. The general Corruption which invades Society.

WHILE the varying situation of fiefs and chivalry was to produce the most important consequences in polity and government, it was to be no less powerful in changing the general picture of society; and the manners, which were to figure in their state of confusion and disorder, are a contrast to those which attended their elevation and greatness. The romantic grandeur and virtue which grew out of the feudal association, in its age of cordiality and happiness, could not exist when that cordiality and happiness were decayed. The disorders of fiefs had operated on chivalry; and the deviations of both from perfection, affecting strongly the commerce of life and the condition of the female sex, were to terminate in new modes of thinking, and new systems of action.

The disastrous state of fiefs, disuniting the interests of the lord and the vassal, gave rise to oppressions and grievances. These produced

produced a proneness to venality and corruption. All ranks of men, from the sovereign to the slave, seemed at variance. Rapacity and insolence were to characterise the superior and the master; chicane and disaffection, the vassal and the servant. A relaxation of morals, total and violent, was to prevail. Chivalry, losing its renown, the purity of the knightly virtues was to be tarnished. When it fell as a military establishment, its generous manners were not to remain in vigour. The women were to lose their value and their pride. The propensity to vice, fostered by political disorder, and the passion for gallantry, driven to extremity by the romantic admiration which had been paid to the sex, were to engender a voluptuousness, and a luxury which, in the circle of human affairs, are usually to distinguish and to hasten the decline and the fall of nations.

Manners, too stately and pure for humanity, are not to flourish long. In the ruined states of fiefs and chivalry, there prevailed not, in the one sex, the scrupulous honour, the punctilious behaviour, and the distant adoration of beauty, which had illustrated the aera of their greatness; nor, in the other, were there to be remarked, the cold and unconquerable chastity, the majestic air, and the ceremonious dignity which had lifted them above nature. A gallantry, less magnificent, and more tender, took place. The fastidiousness and delicacies of former ages were away. The women ceased to be idols of worship, and became objects of love. In an unreserved intercourse, their attractions were

were more alluring. The times, prone to corruption, were not to resist their vivacity, their graces, their passion to please. Love seemed to become the sole business of life. The ingenious and the sentimental found a lifting interest and a bewitching occupation in the assiduities, the anxieties, and the tenderness of intrigue. The coarse and intemperate, indulging their indolence and appetite, sought the haunts, and threw themselves into the arms of prostituted beauty.

The talents which, of old, recorded the deeds of valour, and the achievements of war, were now devoted to the fair (1). In every country of Europe, the poet, or the *Troubadour*, was to consecrate to them his homage and his songs (2). And, to the fashions of gallantry, the rise of literature is to be ascribed. Men of genius, and men who fancied they possessed it, reported to the courts of princes, and to the palaces of the noble; and the praise, which they knew how to lavish, got them attention and patronage. To make verses was the road to preferment. No lady was without her poet. Nor was poetry the exercise only of those who wished to better their fortunes. While it was to give riches and respect to the obscure, by the connections it was to gain to them, it was to be an ornament and an honour to the great. Princes and barons, as well as knights and gentlemen, found it the surest recommendation to their mistresses (3). They sung their charms, their disdain, and their rigours. Even the artificial tenderness of the poet often grew into reality; and

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the fair one, who, at first, only listened to praise, was to yield to passion. The adulation paid to beauty, disposed it to approve; complaints led to pity; pity to love. The enchantment of perpetual flatteries, of prostrations respectful and passionate, of vows repeated with ardour, of sighs ever meant to allure, corrupted a sex, of which the sensibilities are so exquisite. The rite of marriage, formerly so sanctimonious, was only courted to be abused (4). The pride of condition, more powerful than modesty, was, indeed, a check to the virgin; but she was to wait reluctantly the moment, when her coyness and timidities, instead of rebuking the passions, were to be a zest to them. All the fopperies of fancy were exhibited, all the labyrinths of love were explored. A licentiousness, which knew no restraint from principle, was rendered more seducing by the decorums and decorations of a fantastic gallantry (5).

Religion, which must ever mix in human affairs, is oftner to debafe than to enlighten. It is, for the most part, a mass of superstitions, which encourage the weaknesses of mankind. This was the case with Christianity in the darkness of the middle times. The votaries of beauty did not scruple to address the Deity to soften its obstinacy. In the heat of intrigue they invoked the Trinity and the saints for success (6). Religion was employed to give a poignancy to the disorders of prostitution and lust. The rich were to have houses of debauch in the form of monasteries, consisting of many cells or apartments, and under the government

ment of abbesses (7). The profaneness of gallantry disturbed and deforined even the meditations of the most pious. The devotee was to seek a mistress in heaven. He was to look up to the virgin with the eyes of a lover, and to contemplate the beauties of her person, and the graces of her carriage (8). What is more extravagant, the felicities of futurity seemed a trifle unworthy of acceptance, without the contacts and the vanities of an irreverent courtesy. ‘I would, not,’ said a *Troubadour*, ‘be in Paradise, but on the condition of making love to her whom I adore (9.)’

The vices and example of the clergy added to the general contagion. They were to exceed not only in superb living, and in the luxuries of the table, but in the pastimes and the gratifications of illicit love (10). It was in vain that laws were made to prohibit them from entertaining, in their houses, ‘any virgins dedicated to God.’ The arts of the Popes to tear them from their women, would fill volumes. No ecclesiastic was without his concubines (11). The sins of the saint were gross and comfortable. In contempt of all decency, they were even to educate publicly the fruits of their amours. Rampant and dissolute, they preached religion, and were a disgrace to it; virtue and they were in haste to contemn it; another world and they were immersed in the enjoyments of the present.

An universal corruption diffused itself. To be deep in debauch, and successful with the ladies, were certain marks of worth. They were parts of the eminence to which the deserving were to aspire. To be amorous and deceitful, were not less meritorious than to be brave and witty. There was exhibited a strange picture of fierceness and effeminacy, oppression and politeness, impiety and devotion.

The age, in which so many armies, inflamed with zeal, were to fight for the recovery and possession of the holy sepulchre, was remarkable for the most criminal depravity. The pilgrims and crusaders exported the vices of Europe, and imported those of Asia. Saint Louis, during his pious and memorable expedition, could not prevent the most open licentiousness and disorder. He found houses of prostitution at the doors of his tent (12). His character, his example, and his precautions, were restraints, ineffectual and fruitless.

While the ladies of rank were to be besieged in form, to be pursued in all the windings of affection and caprice, and to oppose to their impatient lovers all the obstacles of a delicacy pretended or real, the women of inferior condition were to be approached with familiarity. It even appears to have been common for husbands to make a traffic of the chastity of their wives, though severe regulations were enacted to repress this practice (13). The offices of the laundress and the milliner, being yet

yet no particular professions, there were in the habitations and the palaces of the rich, apartments for women, who, while they performed the services peculiar to these, were also debauched to impurity, and subservient to lust (14). Jurisdiction, being yet ambulatory, and kings, making frequent progresses through their dominions, it was usual for prostitutes to follow the court; and officers were appointed to keep them in subjection and order (15). To be *marshal of the King's whores* in particular places and districts, was an honour and a dignity (16).

To this degeneracy and profane ness, I am inclined to trace the law, which, in the declining condition of fiefs, made it a forfeiture of the estate, for the vassal to debauch the master, the daughter, or the wife of his superior (17).

In the greater towns, there were women who lived openly by prostitution, exercising it as a profession. There were even whole streets which were inhabited by them. In Paris and in London, the number of public brothels was incredible. In the latter, in the days of Richard I., a Lord Mayor imported trumpets from Flanders, and kept stew-houses, where the dainty and the squeamish were to trade in this foreign merchandize (18.) Bordellos or stews were permitted and sanctioned by the authority of government in every country of Europe (19). To twelve of these Henry VII. gave his license; and signs painted on their walls distinguished them, and invited the passenger (20).

So general was the licentiousness which spread itself, that the proprietors of houses found it necessary to let them out under the express condition, that the lessee should keep and harbour no common women (21). Henry VIII. who approved not love in any form, but that of matrimony, suppressed many stew-houses in Southwark, and ordained, that prostitutes should not receive the rites of the church while they lived, nor have a Christian burial, when they were dead (22).

Such were the manners which were produced by the oppreſſions and disorders of fiefs and chivalry. And thus, notwithstanding what many writers have asserted, I am entitled to conclude, that the spirit of chivalry was not uniform any more than that of fiefs; and that, at different periods, its manners were opposite and contradictory.

A U T H O.

A U T H O R I T I E S,

C O N T R O V E R S Y,

A N D

R E M A R K S.

Authorities, Controversy, and Remarks.



B O O K I.

C H A P T E R I.

S E C T I O N I.

(1) ' **A**GRÌ, pro numero cultorum, ab universis per vices
occupantur, quos mox inter se secundum digna-
tionem partiuntur.' *Tacit. de Mor. Germ. c. 26.* ' Privati ac
separati agri apud eos nihil est.' *Caesar de bell. Gall. lib. 4. c. 1.*
The German tribes passed annually from the fields they had
cultivated. ' Arva per annos mutant.' *Tacit. de Mor. Germ.*
c. 26. ' Neque longius anno remanere uno in loco incolendi causa
licet.'

‘ licet.’ *Caesar de Bell. Gall. lib. 4. c. 1.* The condition of property among these nations I have treated in another work. *Historical Dissert. concerning the Antiquity of the English Constitution, Part 1.*

Similar distinctions prevail in all barbarous nations, and give rise to a similar way of thinking. ‘ Formerly,’ says Mr *Adair*, ‘ the Indian law obliged every town to work together in one body, in sowing or planting their crops; though their fields are divided by proper marks, and their harvest is gathered separately. The Cheerake and Muskhoge still observe that old custom.’ *History of the American Indians.*

Among the Indians of Peru, it is said, that the territory occupied was the property of the state, and was regulated by the magistrate; and that, when individuals were permitted to possess particular spots, these, in default of male issue, returned to the community. *Royal commentaries of Peru, book 5. ch. 1. and 3.*

It seems to have arisen out of the old custom, which considered land as the property of nations, that in Europe, when all heirs failed, the property of the individual went to the *fisc*, or to the sovereign as representing the state.

‘ Quod si maritus et mulier sine herede mortui fuerint, et nullus usque ad septimum gradum de propinquis et quibus-
cunque

‘cunque parentibus invenitur, tunc res *fiscus* adquirat.’ *LL.*
Baevvar. tit. 14. l. 9.

‘*Fiscus* tunc agat, quando nec parentum, nec filiorum, nec nec-
 ‘potum, nec agnatorum, nec cognatorum, nec uxor et mariti,
 ‘quae succedat, extare comperitur persona, secundum veterum con-
 ‘soluta.’ *Edictum Theoderici Regis, c. 24.*

The fields in pasture belonged to the community or tribe, as well as the fields in tillage. The moment that the flocks or herds of one individual left them, they might be possessed or occupied by those of another; and so on in succession. It was under the influence of such manners that Abraham said to Lot, ‘Is not the whole land before thee? separate thyself, I pray thee, from me; if thou wilt take the left-hand, then I will go to the right; or, if thou depart to the right hand, then I will go to the left.’ *Genesis, Ch. xii. v. 9.* And to this condition of society the Roman poets make frequent allusions, though they do not seem to have understood it with accuracy *.

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When

* *Ante Jovem nulli subigebant arva coloni,*
Nec arare quidem, aut partiri limite campum
Fas erat; in medium quacrebant; ipsique tellus
Omnia literius nullo poscente serebat. VIRG.

Non domus ulla fores habuit, non fixus in agris
Qui regret certis nimbus arva lapis. TIBUR

When the territory of a tribe or nation ceased to be its property, and individuals acquired particular spots or estates, which they cultivated for their use, and transmitted to their posterity, it was a consequence of the old manners, that these improvements were regarded as the usurpations of the powerful on the weak; and historians assure us, that it happened both in Greece and Italy, that the *land-marks* which had been fixed to distinguish the boundaries of property, were frequently removed or destroyed. It seemed an encroachment on the rights of the people, that lands, which, of old, pastured indifferently the cattle of successive occupiers, should be allotted to the use and convenience only of private men. It was, accordingly, not merely necessary to make laws to prevent the violation of private rights; but, what is curious in an uncommon degree, even the *termini* or *land-marks*, that they might remain unremoved for the preservation and the separation of property, were exalted into *divinities*. Thus, religion, as well as policy, held out its terrors to force mankind to learn the art of appropriation, and to accept of power and riches.

Among the Celtic and German barbarians, the defacing and the removing of land-marks were also common delinquencies; and, in the punishment of them, much severity was exercised.

‘ *Si quis limites complantaverit, aut terminos fixos fuerit aūsus evellere, si ingenuus est, per singula signa vel notas vicenos*

‘ vi.

‘ vi. solid. componat; si servus est, per singula signa L. flagella
‘ fuscipiat.’ *LL. Baivar. tit. xi. l. 1. et 2.*

‘ Si quis liber homo *terminum antiquum* corruperit, aut exter-
‘ minaverit, et probatum fuerit, sit culpabilis lxxx. sol. medium
‘ regi, et medium in cuius fine fuerit terminus. Si quis servus
‘ alienus *terminum antiquum* ruperit, aut exterminaverit, mortis in-
‘ currat periculum, aut sol. xl. redimatur.’ *LL. Longobard, lib. 1.*
tit. 26. l. 1. et 2. See farther *LL. Visigoth. lib. 10. tit. 3. De*
terminis et limitibus.

Boundaries and limits are also an article in the code of Gentoo laws; and the regulations it holds out on this subject are, perhaps, a proof, that the mass of the inhabitants of Hindostan, at the period of their enactment, had not lost the idea of times which preceded the discovery of the advantages of a landed property. *Code of Gentoo laws, ch. 12.*

(2) ‘ Dominum ac servum nullis educationis deliciis dignos-
‘ cas. Inter eadem pecora; in eadem humo degunt; donec actas
‘ separat ingenuos, virtus agnoscat.’ *Tacit. de Mor. Germ. c. 20.*

(3) ‘ Si civitas, in qua orti sunt, longa pace et otio torpeat;
‘ plerique nobilium adolescentium petunt ultra eas nationes, quae
‘ tunc bellum aliquod gerunt, quia et ingrata genti quies, et facilius
‘ inter ancipitia encircunt. . . . Nec arare terra non aut

‘ expectare annum, tam facile persuaderis quam vocare hostes et
 ‘ vulnera mereri: Pigrum quinimmo et iners videtur sudore acqui-
 ‘ rere, quod possis sanguine parare.’ *Tacit. de Mor. Germ. c. 14.*

(4). *Tacit. de Mor. Germ. c. 15. 21. 24.* Struvius, *Corpus historiae Germanicae*, prolegom.

(5) ‘ Convictibus et hospitiis non alia gens effusius indulget.
 ‘ Quemcumque mortalium arcere tecto, nefas habetur, pro for-
 ‘ tunâ quâsque apparatis epulis excipit. Cuius defecere, qui modo
 ‘ hospes fuerat, monstrator hospitii et comes, proximam domum
 ‘ non invitati adeunt. Nec interest. Pari humanitate accipiun-
 ‘ tur. Notum ignotumque, quantum ad jus hospitii, nemo dis-
 ‘ cernit. Abeunti, si quid poposceris, concedere moris: Et pos-
 ‘ cendi invicem eadem facilitas. Gaudent muneribus; sed nec
 ‘ data imputant, nec acceptis obligantur.’ *Tacit. de Mor. Germ.*
c. 21.

The American tribes, who resemble so completely the ancient Germans, are thus characterised by *Lafitau*: ‘ Ils ont le coeur
 ‘ haut et fier, un courage à l'épreuve, un valeur intrepide, un
 ‘ constance dans les tourments qui est hercique, une égalité que le
 ‘ contre-temps et les mauvais succès n'alterent point: Entre eux
 ‘ ils ont un espace de civilité à leur mode, dont ils gardent toutes
 ‘ les bienfiances, un respect pour leur anciens, une déference pour
 ‘ leur égaux qui a quelque chose de surprenant, et qu'on a peine

‘ a

‘a concilier avec cette indépendance, et cette liberté dont ils paraissent extrêmement jaloux : Ils sont peu caressans, et font peu de démonstrations ; mais non obstant cela, ils sont bons, affables, et exercent envers les étrangers et les malheureux une charitable hospitalité, qui a de quoi confondre toutes les nations de l’Europe.’ *Mœurs des Sauvages Ameriquains*, vol. 1. p. 106. See also *Charlevoix, Journ. Hist. lettre 21.* Such, with a few exceptions, it is to be thought, is the character of all nations in an early age of society.

(6) Tacit. de Mor. Germ. c. 15. Struvius, Corp. Hist. Ger. prolegom. Cluver. Germ. Antiq. lib. 1.

(7) ‘Cibi simplices, agrestia poma, recens fera, aut lac concretum. Sine apparatu, sine blandimentis, expellunt famem. Adversus fitim non eadem temperantia. Si indulseris ebrietati, suggerendo quantum concupiscunt, haud minus facile vitiis, quam armis vincentur.’ *Tacit. de Mor. Germ. c. 23.*

(8) ‘Crebrae ut inter vinolentos rixae, raro conviciis, faciunt caede et vulneribus, transfiguntur. Sed et de reconciliandis in vicem inimicis, et jungendis affinitatibus, et adsependis principibus, de pace denique ac bello, plerumque *in conviciis* consulunt: Tanquam nullo magis tempore aut ad simplices cogitationes patcat animus, aut ad magnis incalcat. Gens non aulta nec callida aperit adhuc secreta peccoris licentia luci. Ergo detecta

‘detesta et nuda omnium mens postera die retractatur : Et salva
 ‘utriusque temporis ratio est. Deliberant dum fingere nesciunt;
 ‘constituant dum errare non possunt.’ *Tacit. de Mor. Germ.*
c. 22.

The deliberating on busines, and the holding of councils of state during entertainments, was the practice of the Celtic and Gothic nations. And, it is remarkable, that the word *mallum* or *mallus*, which, during the middle ages, denoted the national assembly, as well as the county-court, is a derivative of *mael*, which signifies *convivium*.

From this union of festivity and busines, there resulted evils which gave occasion to regulations which cannot be read without wonder. It was a law of the Longobards, ‘Ut nullus ebrius suam causam in mallum possit conquirere, nec testimonium dicere; nec comes placitum habeat nisi jejunus.’ *LL. Longobard. lib. 2. tit. 52. l. xi.* We read in *Capit. Kar. et Lud.* ‘Rectum et honestum videtur ut judices jejuni causas audiant et discernant.’ *Lib. 1. l. 62. ap. Lindenbrog.* And the following law was made in a synod held at Winchester ann. 1308. ‘Item, quia in personis ebriis legitimus dici non debet consensus, inhibemus, ne in tabernis per quaecunque verba, aut nisi ieiuna falva, vir aut mulier de contrahendo matrimonio sibi invicem fidem dare praeclamant.’ *Wilkins, Concil. tom. 2. p. 295.*

This

This rudeness, of which we see the source in Tacitus, seems to have continued very long in England. ‘Non exolevit haecenus mos antiquus,’ says *Sir Henry Spelman*, ‘nam in mallis seu placitis, quae afflissae jam vocantur, vicecomites provinciarum bis quotannis magnam exhauiunt vim pecuniac, in judicibus nobilibusque patriae convivandis.’ *Gloss.* p. 385. In Scotland, in the memory of persons yet alive, the lawyers and retainers of the courts of justice did business constantly and openly in the tavern. It is likewise observable, that some particulars which regard the institution of the jury, are to be explained and illustrated from these facts, and this way of thinking. *Historical Dissertation concerning the antiquity of the English constit. Part 4. Sect. 2.*

(9) ‘ Nullas Germanorum populis urbes habitari, fatis notum est, ne pati quidem inter se junetas sedes. Colunt discreti ac diversi, ut fons, ut campus, ut nemus placuit. . . . Nec enim cum libertate et amplitudine soli labore contendunt, ut pomaria converant, et prata separant, et hortos rigent. Sola terrae seges imperatur. Unde autumnum quoque ipsum non in totidem digerunt species: Hicems, et ver, et aestas, intelleciunt ac vocabula habent: Autumni perinde nomen ac bona ignorantur.’ *Tacit. de Mor. Germ. c. 16. 26.*

(10) ‘ Ceterum nec cohibere parictibus deos, neque in ullam humani oris speciem assimilare, ex magnitudine caelestium ar-
bitrantur.

‘bitrabantur. Iucus ac nemora consecrant, deorumque nominibus
 ‘appellant secretum illud, quod sola reverentia vident. Auspicia
 ‘fortia que ut qui maxime observant.’ *Tacit. de Mor. Germ. c. 9.*
Struvius, Corp. Hist. Germ. prolegom.

(11) *Tacit. de Mor. Germ. c. 12.* Cluver, *Germ. Antiq.*
 lib. 1.

(12) ‘Duces exemplo potius quam imperio, si prompti, si
 ‘conspicui, si ante aciem agant, admiratione praesunt.’ *Tacit. de*
Mor. Germ. c. 7.

(13) ‘Nigra scuta, tincta corpora, atras ad proelia noctes le-
 ‘gunt. . . . Cedere loco, dummodo rursus instes, consilii quam
 ‘formidinis arbitrantur.’ *Tacit. de Mor. Germ. c. 6. 43.*

A writer of reputation has, of late, advanced an opinion, that our European ancestors were averse from deceit and stratagem. Yet a propensity to these is perhaps a characteristic of all barbarous nations ; and, that it applied to our forefathers, the testimony before us is a sufficient proof. In opposition to the barbarians of Europe, he holds out the American Indians, and contends that they are defective in active courage. Open violence he accounts as descriptive of the former ; a reliance on stratagem and surprise, he remarks as peculiar to the latter. And, as the cause of
 this

this diversity, he assigns different original dispositions. *Sketches of the History of Man*, vol. 1. p. 23. 24.

The truth is, that a proneness to open violence, is to be applied to the American as well as to the European savage; and that the love of stratagem and surprise was not less peculiar to the European than to the American. Stratagem and surprise, in America and in Germany, and indeed in all tribes and nations whatever, are parts of the art of war, or of military prudence, and refer not to courage. When the military art is nearest to perfection, and when cultivation is highest, there will be less of stratagem in war; for cunning, if it may be allowed the expression, is the wisdom of weaklings. The ingenious author hazards a conjecture for a discovery, and mistakes for philosophy a sally of vivacity.

(14) ‘Latrocinia nullam habent infamiam, quae extra fines cujusque civitatis fiunt; atque ea juventutis exercendae ac defensivae minuendae causa fieri praedicant.’ *Caesar de Bell. Gall. lib. 6 c. 22.* ‘Materia munificentiae per bella, et raptus.’ *Tacit. de Mor. Germ. c. 14.*

Among the Greeks the same manners were known. It was common among them, in early times, for the more eminent and powerful to exercise, with reputation and honour, the crimes of robbery and piracy. *Thucydides, lib. 1. Homer, Odyss. 3.*

Such is the case in all rude communities. In the wilds of America this way of thinking is prevalent at this hour. Warriors, restless and impatient, associate together, and seek for renown and plunder beyond the boundaries of their tribe. It is of bodies of this kind that *Lafitau* speaks in the following passage ; which is not to be read, without recalling to one's mind what Caesar and Tacitus have said of the Gauls and Germans.

‘ Le partis détachés, qui se forment en pleine paix, pour ne pas intéresser la nation par des hostilités, lesqu'elles pourraient avoir des suites facheuses, vont porter la guerre chez les peuples les plus reculés. . . . Cette petite guerre est un véritable assassinat, et un brigandage, qui n'a nulle apparence de justice, ni dans le motif qui l'a fait entreprendre, ni par rapport aux peuples, à qui elle est faite ; ils ne sont seulement pas connus de ces nations éloignées, ou ne le sont que par les images qu'ils leur causent, lorsqu'ils vont les assommer ou de faire esclaves presque jusques aux portes de leur palisades. Les sauvages regardent cela néanmoins comme un belle action.’
Tom. 2. p. 169.

It was under the influence of such manners that the northern nations carried on those piratical incursions, which, from the time of Charlemagne, filled Europe with terror. They were planned and conducted by men of rank, and conferred honour on them, and on the inferior adventurers. Yet modern historians,

ans, who are perpetually applying modern notions to antient times, attend not to this circumstance, and treat these maritime expeditions with a severity that may be moral enough, but which is historically injudicious and absurd.

In the age of Tacitus, the only German community who appear to have conceived the blame of this conduct, was the Chauci. For the great superiority and refinement of this people, I pretend not to account. But though, in general, it consisted with honour and merit, among the German states, to commit spoil and plunder among neighbouring nations ; yet, it is not to be forgot, that the theft or violence of an individual within the territories of his own tribe, was atrocious, and a subject of punishment. This circumstance, which is curious in the history of morality, is to be explained from the condition of an infant society. Their riches, consisting chiefly of herds and flocks, which wander over vast tracts of country, are only to be protected by the terrors of justice. Hence the laws of the barbarians affixed *death* to the crime of stealing a horse, while the assassination, or the murder of a man, was expiated by a piece of money or a fine. ‘*Qui caballum furaverit, capite pumatur.*’ *LL. Saxon tit. 4. l. 1.* The extent of their forests, while it contributed to render more easy the abstraction of cattle, made it the more necessary to punish the offence. It also was a result of their unappropriated solitudes, that the proprietors of cattle found a difficulty in tracing them. Hence the custom of fixing bells to them.

‘Mos quippe *antiquus* inoleverat Francis, et maxime Austrasiis,
 ‘ut palecentibus equis *tintinnabula* imponerent, quo si forte lon-
 ‘gius in pascendo aberrassent, eorum sonitu dignosci possent.’
Lindenbrog. Gloss. voc. Tintinnabulum. And what is worthy of
 notice, the taking away of these bells was a heinous delinquence,
 and punished severely. ‘Si quis tintinnabulum involaverit de
 ‘jumento vel bove, solidum reddat. De vacca tremisses duos;
 ‘De berbicibus vel quibuscumque pccoribus, tremisses singulos co-
 ‘gatur exsolvere.’ *LL. Wifigoth. lib. 7. tit. 2. l. 11.* See also
LL. Salic. tit. 29. et LL. Burgund. tit. 4. § 5. In general,
 the atrocity of theft among the Gothic nations, may be gathered
 from the following Swedish law, which is of high antiquity.
 ‘In furti reum securi, furca, defoßione, viviconburio animad-
 ‘verti posse, nec eo nomine vel haeredibus, vel ecclesiae, vel regi,
 ‘ullam satisfactionem deberi.’ *Stiernhook de jur. Sueon. et Goth.*
vct. p. 366.

These important circumstances in the history of manners, the
 legality of a distant robbery, and the criminality of a domestic
 one, which are so pointedly illustrated by the early state of the
 Greeks, by that of the German and Celtic barbarians, and by
 the condition of the American tribes at this hour, receive a con-
 firmation, of the greatest weight, from the consideration of the
 Gentoo jurisprudence. In the code of Gentoo laws, there is this
 remarkable ordinance.

‘The

‘ The mode of *shares among robbers* is this: If any *thieves*,
‘ by the *command* of the *magistrate*, and with his *assistance*, have
‘ committed depredations upon, and brought any booty from an-
‘ other province, the magistrate shall receive a share of one sixth
‘ of the whole; if they receive no command or assistance from the
‘ magistrate, they shall give the magistrate, in that case, one tenth
‘ for his share; and, of the remainder, their chief shall receive four
‘ shares; and whosoever among them is perfect master of his oc-
‘ cupation, shall receive three shares; also, whichever of them is
‘ remarkably strong and stout, shall receive two shares, and the
‘ rest shall receive one share; if any one of the community of the
‘ thieves happens to be taken, and should be released from the
‘ *cutcherry* *, upon payment of a sum of money, all the thieves
‘ shall make good that sum by equal shares.’ *Code of Gentoo laws*,
p. 146.

A person who has not considered savage and barbarous manners, will think, with the utmost surprise, that a magistrate should not only command a robbery, and give his countenance and protection to thieves, but even participate in their plunder. Such, notwithstanding, is the system of equity among all rude nations. While distant expeditions, however, and robberies, were thus considered as legal and honourable, the disturbers of domestic quiet and happiness were punished among the Hindoos with the greatest rigour.

‘ If

* A court of justice.

‘ If a man,’ say their laws, ‘ steals an elephant, or a horse, excellent in all respects, the magistrate shall cut off his hand, and his foot, and buttock, and deprive him of life.

‘ If a man steals an elephant, or a horse, of small account, the magistrate shall cut off from him one hand and one foot.

‘ If a man steals a camel or a cow, the magistrate shall cut off from him one hand and one foot.’ *Gentoos laws*, p. 249.

There are, in this code, a great variety of laws against domestic thefts and robberies. The state of society of the Hindoos, to which it has a reference, resembles very much that of the German barbarians, when they had overturned the empire of the Romans; and a comparison of it with the laws of the Ripuarians, Burgundians, Longobards, and Franks, would lead to many curious discoveries in the progress of legislation and government.

(15) ‘ Nec regibus infinita aut libera potestas. . . . De minoribus rebus principes consultant, de majoribus omnes. Ita tamen, ut ea quoque, quorum penes plebem arbitrium est, apud principes pertractentur. Coeunt, nisi quid fortuitum est subitum inciderit, certis diebus, cum aut inchoatur Luna aut impletur; nam agendis rebus hoc auspiciatissimum initium credunt. . . . Rex vel princeps, prout actas cuique, pro-
‘ ut

‘ ut nobilitas, prout decus bellorum, prout facundia est, audiuntur, auctoritate suadendi, magis quam jubendi potestate. Si displicuit sententia, fremitu aspernatur: Sin placuit, framreas concutunt.’ *Tacit. de Mor. Germ. c. 7. xi.*

This limitation of government is a consequence of manners in early times; and, notwithstanding what is observed by many writers of antiquity, it seems very clear, that the popular or republican mode of administration is prior to monarchy.

In every rude community we know, the government has a surprising affinity to that of the Germans, as described by Tacitus. And this is peculiarly observable of the American nations. ‘ Tout,’ says *Charlevoix* of the Americans, ‘ doit être examiné et arrêté dans les conseils des anciens, qui juge en dernière instance.’ *Journ. Historiq. lettre 18.* ‘ The highest title among the Americans,’ says *Mr Adair*, either in military or civil life, signifies only a chieftain: They have no words to express despotic power or arbitrary kings. . . . The power of their chiefs is an empty sound. They can only persuade or dissuade the people, either by the force of good nature and clear reasoning, or colouring things so as to suit their prevailing passions. It is reputed merit alone that gives them any titles of distinction among the meanest of the people. . . . When any national affair is in debate, you may hear every father of a family speaking in his house, on the subject, with rapid

‘ rapid and bold language, and the utmost freedom that a people can use. Their voices, to a man, have due weight in every public affair, as it concerns their welfare alike.’ *Hist. of the American Indians*, p. 428. See also *Lafitau*, tom. 2. p. 475.

(16) ‘ Ac primo statim Chaucorum gens, quamquam incipiat a Frisiis, ac partem litoris occupet, omnium quas exposui gentium lateribus obtenditur, donec in Cattos usque sinuetur. Tam immensum terrarum spatium non tenent tantum Chauci, sed et implant: Populus inter Germanos nobilissimus, quique magnitudinem suam malit justicia tueri. Sine cupiditate, sine impotentia, quieti secretique, nulla provocant bella, nullis rapibus aut latrociniis postulabantur. Idque praecipuum virtutis ac virium argumentum est, quod, ut superiores agant, non per injurias assequuntur. Prompta tamen omnibus arina, ac si res poscat exercitus: Plurimum virorum equorumque: Et quiescentibus eadem fama.’ *Tacit. de Mor. Germ. c. 35.*

‘ Fennis mira feritas, foeda paupertas, non arma, non equi, non penates: Viētui herba, vestitui pelles, cubile humus. Sola in sagittis spes, quas inopia ferri ossibus asperant. Idemque venatus viros pariter ac feminas alit. Parvum enim comitatur, parvemque praedae petunt. Nec aliud infantibus ferarum imbriumque suffugium, quam ut in aliquo ramorum nexu contingantur.

‘contegantur. Huc redeunt juvenes, hoc senum receptaculum.
‘Id beatius arbitrantur, quam ingemere agris, illaborare domi-
‘bus suas alienasque fortunas spe metuque versare. Securi ad-
‘versus homines, securi adversus deos, tcm difficillimam afflicti
‘sunt, ut illis ne voto quidem opus sit.’ *Tacit. de Mor. Germ.*
c. 46.

SECTION II.

(1) **M** R MILLAR on the Distinction of Ranks, ch. 1. Sketches of the History of Man, vol. 1. Dr Robertson, History of America, vol. 1. p. 318.

(2) 'Verberare servum, ac vinculis et opere coercere, rarum.' *Tacit. de Mor. Germ. c. 25.*

(3) 'Domus officia uxor et liberi exequuntur.' *Tacit. de Mor. Germ. c. 25.* 'Liberos suos,' says *Caesar* of the Gauls, 'nisi quum adoleverint, ut munus militiae sustinere possint, palam ad se adire non patiuntur; filiumque in puerili aetate in publico in conspectu patris affltere turpe ducunt.' *De Bell. Gall. lib. 6. c. 18.*

(4) 'Quum ex captivis quaereret Caesar, quamobrem Ariovistus proelio non decertaret? hanc reperiebat causam, quod apud Germanos ea consuetudo esset, ut matres familias earum fortibus et vaticinationibus declararent, utrum proelium committi ex usu esset necne, eas ita dicere, non esse fas Germanos superare,

'*si*

‘si ante novam lunam proelio contendissent.’ Caesar de Bell. Gall.
lib. 1. c. 50.

(5) Strabo lib. 7. Struvius, Corpus Histor. German. prolegom.
 Cluver. German. Antiq. lib. 1.

(6) ‘Inesse quinetiam sanctum aliquid, et providum putant.
 . . . Vidimus sub Divo Vespasiano Velledam diu apud ple-
 ‘rosque numinis loco habitam. Sed et olim Auriniam, et com-
 ‘plures alias venerati sunt, non adulatione, nec tamquam face-
 ‘rent deas.’ Tacit. de Mor. Germ. c. 8.

The honours of divinity came to be prostituted to these women with a wonderful profusion. Among the monuments of antiquity in Germany, many altars, with inscriptions to them, have been discovered; and, both in England and Scotland, there are remains of the same kind. *Keyster, Antiq. Select. Septentr. et Celt.* p. 379—443. *Camden, Britannia, passim.* The appellation given them, in Caesar, is *matres familias*; and these inscriptions bear *matribus* or *matronis Suevis, Treveris, Aufanis, &c.*

Under Paganism and Christianity, the fatidical arts they practised drew upon them a very different fate. The credulity of the Pagan advanced them into goddesses. The more criminal ignorance of the Christian considered them as witches, and consigned them to the fire. Their mutterings were conceived to be

magical. It was thought they could fascinate children with a look, were in covenant with demons, to whose embraces they submitted, could blast the fruits of autumn, raise commotions in the air, and interprete dreams. What is remarkable, the laws against such women, and against witchcraft, were not abrogated in England till the year 1736: And, in other countries of Europe, there are still regulations in force against these miserable objects, and this imaginary crime.

(7) 'Ad matres ad conjuges vulnera ferunt: Nec illae numero rare, aut exfugere plagas pavent.' *Tacit. de Mor. Germ. c. 7.* *Cluver. Germ. Antiq. lib. 1.*

(8) 'Feminae lineis amictibus vclantur, eosque purpura variant.' *Tacit. de Mor. Germ. c. 17.* 'Cadurci, Caleti, Ruteni, Bituriges, ultimique hoininum existimati Morini, imo vero Galliae universae vela texunt. Jam quidem et Transtrhenani hostes: 'Nec pulchriorem aliam vestem eorum feminae noverunt.' *Plin. Hist. Nat. lib. 19. c. 1.* Concerning the Longobards, there is the following passage in *Paulus Diaconus*: 'Vestimenta eis erant laxa, et maxime linea, qualia Anglo-Saxones habere solent, ornata infinitis latioribus, vario colore contextis.' *Hist. Longobard. lib. 4. c. 7.* And of the daughters of Charlemagne, there is this notice in *Eginhard.* 'Filiae lausicio aspuescere, coloque ac fuso, ne per otium torperent, operam impendere, atque ad omnem honestatem erudiri jussit.' *Vit. Car. Mag.* In

America,

America, according to *Mr Adair*, the women are the chief, if not the only manufacturers. The men judge, that if they should perform offices of this kind, it would exceedingly disgrace them. *Hist. of the Amer. Indians*, p. 423. These offices, however, being characteristic of the women, are honourable in them. In Rome, during the virtuous times of the republic, the employments of the women were the distaff and the spindle; and *Plutarch* has said, in reproach of Fulvia the widow of Clodius, that she could neither spin nor stay at home. *Vit. Anton.*

(9) 'Statim e somno, quem plerumque in diem extrahunt,
' lavantur, saepius calida, ut apud quos plurimum hieins occu-
' pat.' *Tacit. de Mor. Germ. c. 22.*

————— 'Mollesque flagellant
' Colla comae.'

MART. EPIG. lib. 1.

'Partemque vestitus superioris in manicas non extendunt;
' nuda brachia ac lacertos: Sed et proxima pars pectoris patet.'
Tacit. de Mor. Germ. c. 17. 'Cet usage,' says *Pelloutier*,
's'est conservé en Saxe, en Prusse, et en Livonie. Les femmes
'y portent des chemises sans manche, et laissent leur gorge à
'découvert.' *Hist. des Celtes*, lib. 4. ch. 4.

Diodorus Siculus, lib. 5: records the comeliness both of the Gaulic and German women; and *Byfala*, a German beauty, is celebrated by *Ausonius*,

(10.) 'Matrem suam,' says *Tacitus* of Civilis, 'sororesque,
' simul omnium conjuges, parvosque liberos, confistere a tergo
' jubet, hortamenta victoriae.' *Hist. lib. 4.* 'In proximo pig-
' nora; unde feminarum ululatus audiri, unde vagitus infantium.
' Memoriae proditur quasdam acies, inclinatas jam
' et labantes, a feminis restitutas, constantia precum, et objectu
' pectorum, et monstrata cominus captivitate, quam longe impa-
' tientius feminarum suarum nomine timent.' *Tacit. de Mor. Germ. c. 7. 8.* 'Ut virorum cantu, feminarum ululatu, sonuit
' acies.' *Tacit. Hist. lib. 4.* See also *Caesar de Bell. Gall. lib. 1. c. 51.*

'Adeo ut efficacius obligentur animi civitatum, quibus inter
' obsides *puellae* quoque nobiles imperantur.' *De Mor. Germ. c. 8.* *Suetonius*, speaking of the transactions of Augustus against the barbarians, has these words: 'A quibusdam novum genus
' obsidum *feminas* exigere tentaverit; quod negligere *marium*
' *pignora* sentiebat.' *Vit. Aug. c. 21.*

(11) 'Sororum filiis idem apud avunculum qui apud patrem
' honor.' *Tacit. de Mor. Germ. c. 20.* Hence it is, says Montesquieu, that our earliest historians speak in such strong terms of the love of the kings of the Franks for the children of their sisters. *L'esprit des Loix, lib. 18. ch. 22.* John de Laet remarks of the Brasilians, that they call their uncles and aunts *fathers* and *mothers*; and the same custom prevails among the
north

north American Indians. *Adair hist. of the Amer. Indians*, p. 213. Among the Hurons, says *Charlevoix*, with whom the dignity of the chief is hereditary, the succession is continued through the *two-men*; so that, at the death of a prince, it is not his own, but his *sister's son* who succeeds; and, in default of him, the nearest relation in the female line. It is added, 'Si toute un branche vient à s'éteindre, la plus noble *matrone* de la tribu, ou de la nation, choisit le sujet, qui lui plait davantage, et le déclare chef.' *Journ. Hist. Lett.* 18. 'Æthiopes,' says *Damaſcenus*, 'fororibus potissimum honorem exhibent, et successionem tradunt reges, non suis, sed fororum filiis.' *De mor. Gent.* These facts, which coincide so curiously, express, in a forcible manner, the early importance of the sex.

(12) 'Nec aut consilia earum aspernantur, aut responsa negligunt.' *Tacit. de Mor. Germ.* c. 8. To deliberate, in public, on national concerns, was a privilege common to the women in all the Gothic and Celtic tribes. *Plutarch, de virtut. mulier. Polyaenus in Stratag.* lib. 7. This advantage they enjoyed also in old times in Greece. *Goguet, part. 2. book 1. ch. 4.* And, at this hour, in America, they are called to the national meetings, to give their advice and counsel. *Charlevoix, Journ. Hist. let. 13. 18.* 'Les femmes,' says *Lafitau*, 'sont toujours les premières qui délibèrent, ou qui doivent délibérer, selon leur principes, sur les affaires particulières ou communes. Elles tiennent leur conseil à part, et en conséquence de leur détermination, elles donnent avis

‘ avis aux chefs des matieres qui sont sur le tapis, afin qu’ils en deliberent à leur tour. Les chefs, sur ces avis, font assembler les anciens de leur tribu ; et si la chose dont on doit traiter interesse le bien commun, tous se reunissent dans le conseil generale de la nation.’ *Tome 1. p. 477.*

The German women, after their nations had made conquests, still attended to affairs. As they debated, in the days of Tacitus, in the assemblies of their tribes, so they appeared afterwards in the Gothic parliaments. Among the Franks, as well as the Anglo-Saxons, the Queens had an active share in the government ; and, among the former, there is the example of a Queen who received a national homage. *Greg. of Tours, lib. 4.* Werburgh, Queen to King Wightred, assisted at the wittenagemot, or national council, held at Berghamsted. *Chron. Sax. p. 48.* *Malmsbury, lib. 2.* mentions a parliament held by King Edgar, in which he was assisted by his mother Alfgina. And Canute is said, in a national assembly, to have acted by the advice of Queen Emma, and the bishops and nobility of England. *Mat. West. p. 423.*

When the crown fell to a prince in his minority, the queen-mother had the guardianship. Thus Fredegund had the guardianship of her son Clotarius II. Brunehild of her grandsons Theodebert and Theoderic, and Balthildis of her son Clotarius III.

(13) The following particulars, as well as those already mentioned, favour the notion of the importance of women in early times. ‘Apud Saunitas vel Samnites, de adolescentibus et virginibus quotannis publicum habetur judicium. Quem igitur eorum optimum esse sententia judicium pronunciarit, is sibi ex virginibus eligit uxorem quem vult, deinde secundus ab eo alteram, et sic de caeteris deinceps.’ *Damasc. de Mor. Gent.* ‘Sauromatae uxoribus in omnibus obtemperant, tanquam dominabus.’ *Ibid.* ‘Lycii vitam sustinuerunt ex latrociniis. Legibus autem non utuntur, sed consuetudinibus, dominanturque ipsis feminae inde usque ab initio.’ *Heraclides de Politiis Graecorum.* ‘In ea regione quam Athamanes habitant, mulieres terram colunt, viri greges pascunt.’ *Ibid. Tacitus*, discoursing of the antient Britains, has these words. ‘His atque talibus in vicem instructi, Boudicea generis regii femina, duce (neque enim sexum in imperiis discernunt) sumpfere universi bellum.’ *Vit. Agric. c. 16.* In Homer, who paints rude manners, the women make a figure. In Virgil, who describes refined manners, they are insipid. Helen, Hecuba, Andromache, Penelope, Nausicaa, and Calypso, have marked and distinct characters. But Lavinia seems to be without passions of any kind, and to have that nothingness of character which, in the ages of civility, is too frequently connected with the most enchanting forms. The women of Egypt were highly prized, and had a kind of authority over the men. The toilets of the goddesses in Homer, and the gay dresses of the Greek ladies, seem to mark the considera-

tion of the sex. At Sparta, the women interfered in the affairs of state, and assumed a superiority over the men. ‘Les femmes,’ says *Charlevoix* of the Americans, ‘ont la principale autorité chez tous les peuples de la langue Huronne, si on en excepte le canton Iroquois d’Onneyouth, où elle est alternative entre les deux sexes.’ *Journ. Hist. lett.* 18.

The importance of women among the Hindoos, is illustrated in a striking manner by the following laws.

‘If a person has called a modest woman unchaste, and the woman, or her husband, should make complaint to a magistrate, whenever the person accused appears before the magistrate, or arbitrator, he shall, upon the spot, answer to the complaint, and make no delay.

‘If a woman, impelled by any calamity, should come to any person, and remain with him, if he commits fornication with that woman, the magistrate shall fine him two hundred and fifty *puns* of *cowries*.

‘If a man speaks reproachfully of his wife’s father or mother, the magistrate shall fine him fifty *puns* of *cowries*.

‘If a man is prepared to cast upon a woman’s body tears, or phlegm, or the paring of his nails, or the gum of his eyes, or the

‘ the wax of his ears, or the refuse of viuals, or spittle, the magistrate shall fine him forty *puns* of *cowries*,

‘ If a man throws upon a woman, from the neck upwards, any spue, or urine, or ordure, or semen, the magistrate shall fine him one hundred and sixty *puns* of *cowries*,

‘ So long as a woman remains unmarried, her father shall take care of her; and, so long as a wife remains young, her husband shall take care of her; and, in her old age, her son shall take care of her; and if, before a woman’s marriage, her father should die, the brother, or brother’s son, or such other near relations of the father, shall take care of her; if, after marriage, her husband should die, and the wife has not brought forth a son, the brothers, and brothers sons, and such other near relations of her husband, shall take care of her: If there are no brothers, brothers sons, or such other near relations of her husband, the brothers, or sons of the brothers of her father shall take care of her; and, in every stage of life, if the persons who have been allotted to take care of a woman, do not take care of her, each, in his respective stage accordingly, the magistrate shall fine them.’ *Code of Gentoo laws*, p. 111. 163. 214. 220. 224. 282.

S E C T I O N III.

(1) ' **E**T Venus in Sylvis jungebat corpora amantum ;
 ' Conciliabat enim vel mutua quamque cupido,
 ' Vel violenta viri vis, atque impensa libido,
 ' Vel precium, glandes, atque arbuta, vel pira lecta.'

Lucret. lib. 5.

(2) ' Intersunt parentes et propinqui ac *munera* probant : Mu-
 ' nera non ad delicias muliebres quae sita, nec quibus nova nupta
 ' comatur ; sed boves et frenatum equum, et scutum cum framea
 ' gladioque. In haec *munera* *uxor* accipitur, atque invicem ip-
 ' fa armorum aliquid viro offert. Hoc maximum vinculum,
 ' haec arcana sacra, hos conjugales deos arbitrantur.' *Tacit. de*
Mor. Germ. c. 18.

Remains of these usages are to be found during every period of the middle ages. About the year 500, on the marriage of Alamaberga, the niece of Theodoric King of the Ostrogoths, that prince wrote a letter to her husband, Hiermanfrid, King of the Thuringians ; from which it appears, that dressed or accoutred horses

horses were presented ; and, in *Loccenius*, there are other examples to the same purpose. *Antiq. Sueogoth. lib. 2.* Among the Irish, a war horse and a spear were conjugal presents, till a late aera. ‘Eiusmod quidpium,’ says *Sir Henry Spelman*, in allusion to the passage quoted from Tacitus, ‘apud Germanorum nepotes Hibernicos ipsimet aliquando deprehendimus. ‘Equum scilicet militarem cum framea inter jugalia munera solennius fuisse, sed a patre sponsae donatum. Addebat autem ‘Hiberni cytharam, ut blandioris fortunae solatium.’ *Gloss. p. 174.*

In the American marriages, an interchange of presents was also an essential circumstance, and gave them a sanction and validity. ‘Le mariage n’est pas plutot resolu que le parentes de l’epoux envoient un present dans le cabane de l’epouse. Ce present consiste en des colliers de porcelaine, des pelleteries, quelques couvertures des fourniure, et d’autres meubles d’uage, qui vont aux parens de la fille, à laquelle on ne demande point de dot ; mais seulement qu’elle veuille accepter l’epoux qu’on lui offre. Ces sortes des pretens ne se font pas seulement une fois, il s’en fait un espece d’alternative entre les deux cabanes des futurs epoux, laquelle a ses loix prescrites par la coutume ; mais, des que les pretens sont acceptés, le mariage est cense, conclu, et le contrat passé.’ *Lafitau, tom. 1. p. 565.*

From the words of Tacitus, it appears, that among the Germans the content of the parents or relations was particularly necessary

necessary in the contracting of marriages; and this is still more obvious from the laws of the barbarians, after they had made conquests. *LL. Wifgoth, lib. 3. tit. 2. 4. 8.* *LL. Saxon. tit. 6. LL. Frijorum, tit. 9.* The reason was, that the young men and the young women might not, through passion, marry into families hostile to their own. In a state of society which is confined, and where government is imperfect, divisions and animosities among chiefs are frequent, and carried to extremity. It is useful to remark, that the necessity of this consent, and the similar disorder of the feudal manners, ascertained *the incident of marriage*; in consequence of which, the *wards* of a *superior* could not marry without his approbation. This *incident*, which was to grow so important, is to be traced back to the woods of Germany. *Hist. Differt. concerning the antiqu. of the English constitution, part 2.*

(3) 'Nec se mulier extra virtutum cogitationes, extraque
' bellorum casus putet, ipsis incipientis matrimonii auspiciis ad-
' monetur, venire se laborum periculorumque *sociam*, idem in
' pace idem in bello passuram ausuramque; hoc juncti boves,
' hoc paratus equus, hoc data arma denuntiant. Sic vivendum,
' sic pereundum.' *Tccit. de Mor. Guim. c. 18.*

The matrimonial gifts among the savages of America, expressed, in like manner, the labour to which the women were to submit, and were doubtless to be understood in the same light, as indications

indications of equality, and expressions of respect. Yet *Charlevoix* affects to consider them rather as marks of slavery, than as testimonies of friendship. *Journal. Hist. let.* 19. Of this author, it is to be wished, that he had given his facts without reasoning upon them ; or, that he had endeavoured to be consistent with himself ; for, in other parts of his writings, we are led to conceive a high opinion of the state of the American women. My Lord Kaims and Mr Millar seem, in the present case, to have estimated too highly his opinion. And I am sensible that Dr Robertson has subscribed to their sentiments. They join, in considering the presents to the women as characteristic of the meanness of their condition, and of their being the slaves of the men. They connect slavery with labour and business, without reflecting, that ease and luxury cannot possibly belong to women in barbarous times, and that, in all times, the men and women are to be judged of by different standards. The warrior does not apply the same rules to his son and his daughter, and does not fancy that they are to shine alike in feats of arms. Valour he accounts the chief quality of the former : In the latter, he requires something more of gentleness, and a skill in domestic affairs. Of this there is a very strong and apt illustration in Mr *Adair*, with which I will conclude this note.

‘The American Indians lay their *male* children on the skins
‘of panthers, on account of the communicative principle, which
‘they reckon all nature is possessed of, in conveying qualities ac-
‘cording

‘ according to the regimen followed ; and, as the panther is endued with many qualities beyond any of his fellow animals in the American woods, as smelling, strength, cunning, and a prodigious spring, they reckon such a bed is the first rudiments of war. But, it is worthy of notice, that they change the regimen of nurturing their young *females* : These they lay on the skins of fawns, or buffalo-calves, because they are *shy* and *timorous* ; and, if the mother be indisposed by sickness, her nearest female relation suckles the child, but only till she recovers.’ *Hist. of the American Indians*, p. 421.

I enter not into the dispute, whether there be panthers in America, or whether this name is only given to distinguish animals which resemble them. In either case, my argument is safe, and to the point.

(4) ‘ Pugnatum in obsidentis ; et creptus Segestes, magna cum propinquorum et clientum manu. Inerant *feminae nobiles* ; inter quas uxor Arminii eademque filia Segestis, mariti magis quam parentis animo, neque victa in lacrymas, neque voce supplex, compressis intra sinum manibus, gravidum uterum intuens. . . . Arminium super insitam violentiam rupta uxor, subiectus servitio uxoris uterus, vecordem agebant ; volitabatque per Cheruscos arma in Segestem, arma in Caesarem poscens.’ *Tacit. Annal. lib. 1. c. 57. 59.*

(5)

(5) 'Severa illuc matrimonia. . . . Paucissima in tam numerosa gente *adulteria*, quorum poena praesens et maritis permissa. Accisis criminibus, nudatam coram propinquis expellit domo maritus, ac per omnem vicum verbere agit.' *Tacit. de Mor. Germ.* c. 18. 19.

The power of the husband to punish the adultery of the wife continued long during the middle ages. *LL. Visigoth. lib. 3. tit. 4. l. 3. 4.* *LL. Burgund. tit. 68. l. 1.* It seems natural in a state of society, before the jurisdiction of the magistrate is fully acknowledged; and it is to be found accordingly among the Americans and other nations. *Lafitau tom. 1. p. 588.* *Europ. Settlem. vol. 1. p. 180.*

It is likewise to be observed, that the same mode of punishment prevailed long. 'Adulterii poena,' says *Lindenbrogius*, 'decalvari et sustari per vicos vicinantes.' *Gloss. p. 1349.* See farther *LL. Longobard. lib. 1. tit. 17. l. 5.* When the magistrate came to punish this delinquency, and, when the women, growing more detached from business, considered themselves as objects of luxury and pleasure, the crime of adultery appeared less heinous and offensive; and a separation or divorce, with the infamy of incontinence, became the punishment of an adulteress.

From the assembled relations of the culprit, of whom *Tacitus* speaks, it is to be imagined, that, in conjunction with the husband, they constituted a court, and sat upon her in judgment. *Coram propinquis expellit domo maritus.* Before the jurisdiction of the magistrate is fully understood and unfolded, it appears, that a kind of domestic tribunal exercises authority, and forms a step in the progress of civil and criminal jurisdiction. This, in fact, we know to have been the case among the Romans. *Dion. Halicarn. Antiq. Rom. lib. 2.*

(6) ‘ Publicatae pudicitiae nulla venia: Non forma, non aetate, non opibus maritum invenerit. Nemo enim illic vitia ridet: Nec corrumpere et corrupti seculum vocatur.’ *Tacit. de Mor. Germ. c. 19.*

Tacitus, in this passage, as well as in many other places of his sentimental and incomparable treatise, glances at the depraved manners of the Romans. The expression *non opibus*, of which I have made no use in the text, applies not to the German tribes who inhabited the inland country, but to those who bordered on the territories of the Romans.

The same attentions to chastity, so beautifully described by the Roman historian, prevailed among the Americans. ‘ Ils attribuent à la virginité et à la chasteté certaines qualités et vertus particulières.’ *Lafitau, tom. 1. p. 339.* Thus it is in all rude nations;

nations ; and, I believe, it will be found, on examination, that those circumstances of immodesty among them, which oppose this way of thinking, have their rise in the weaknesses of superstition, and in the abuses of the priesthood.

Nature adorns and protects the female sex with modesty. And, it is a most decisive proof of the respect paid to women, that, in almost all nations, the institution of marriage is connected with usages, which are contrived to favour and encourage their reserve and chastity. It is the male always who solicits ; and, in some states, a kind of violence was employed to support and succour the modesty of the bride. It seems to have been thus in early times among the Romans, and it was obviously so among the Spartans. In the former case, the bride appears to have been carried forcibly from the lap of her mother ; in the latter, the affair assumed the semblance of a rape. *Festus, Catulus, Plutarch in Vit. Lycurg. et Quaest. Rom.* The virgin and her relations, no doubt, understood previously the transaction, and expected this violence. But it was a compliment to her thus to give an air of constraint to her consent, to relieve her embarrassment and distress, her emotion of fear and hope, anxiety and tenderness.

It was with a similar view that the Romans conducted a bride to the house of her husband, with her head covered. And the Germanic nations paid also this mark of respect to the modesty

of their women, after they had made conquests. Compare *Apul. Metam. lib. 4.* *Tacit. Annal. lib. 15. c. 37.* And the laws of the barbarians *de conjugali velatione.*

These circumstances, and those which I formerly remarked, with others not less expressive of the early importance of women, that I am presently to mention, seem to have escaped my Lord Kaims and Mr Millar; and I beg it to be understood, that I oppose thus frequently their opinions from no captiousness of temper, but because, if they are just, mine must be ill founded and improper.

(7) 'Sera juvenum venus; eoque inexhausta pubertas; nec virgines feitinantur; eadem juventa, similis proceritas: Pares validique miscentur; ac robora parentum liberi referunt. . . . ' Quanto plus propinquorum, quo major ad finium numerus, tanto gratiolor fene^ctus: Nec ulla orbitatis pretia. ' Numerum liberorum finire, aut quemquam ex agnatis necare, flagitium habetur.' *Tacit. de Mor. Germ. c. 19. 20.*

(8) 'Sua quemque mater uberibus alit, nec ancillis, ac nutritibus delegantur.' *Tacit. de Mor. Germ. c. 20.* This also is the practice in America and in all rude communities. 'Les sauvagees n'ont garde de donner leur enfans á d'autres pour les nourrir. Elles croiroient se dépoilier de l'affection de mere, et elles sont dans une surprise extrême de voir qu'il y ait des

‘des nations au monde, où cette usage soit reçù et établi.’ *Lafitau, tom. 1. p. 593.* The Roman virtue was at an end, says the author of the dialogue concerning orators, when the women gave their children to be suckled and educated by Greek nurses and slaves. *Cap. 29.* In France, till the age of Charles V. princesses, and ladies of high rank, continued to suckle and educate their children. *Mezeray in Bulteel’s translation, p. 388.*

(9) A very ingenious writer has observed, that, before marriage is known as a regular institution, the interest of the mother must be great; children being then, in a particular manner, under her jurisdiction, and having no connection, or a distant one, with the father. His observation is not to be controverted; and, accordingly, he mentions the circumstance, as an exception to his theory. *Prof. Miltar concerning the Distinction of Ranks, ch. 1. sect. 2.*

It is obvious, that the respect which the children pay to the mother in this situation, raises the importance of the sex; and it is worthy of notice, that, after marriage is known as an institution, and the husband and wife live together in the same cabin, the influence of the mother is by no means diminished. For, though the father then acquires authority, the more amiable and winning attentions of the mother preserve and continue her consideration; and the military pursuits of the former calling him abroad, and employing his thoughts, leave to her the task

task of educating their offspring. Thus, among the Gauls and Germans, it was not till children attained a certain age, that they dared publicly to approach their fathers. *Sect. 2. note 3.* ‘Les enfans,’ says *Charlevoix* of the Americans, ‘n’appartientent qu’ à la mère, et ne reconnoissent qu’ elles. Le père est toujours comme étranger par rapport à eux.’ *Journ. Hist. let.* 19. It is our nature to be more attached to what is lovely and gentle, than to what is stern and venerable. It is ‘the soft green of the foul,’ as an elegant writer * expresses it, ‘on which the eye delights to rest.’

(10) ‘Septa pudicitia agunt, nullis spectaculorum illecebris,
‘ nullis conviviorum irritationibus corruptae. *Litterarum secreta*
‘ viri pariter ac feminae ignorant.’ *Tacit. de Mor. Germ. c. 19.*

That knowledge and letters were incentives to corruption, we have also the opinion of *Sallust*, who, notwithstanding the freedom of his life, is a beautiful disclaimer on the side of morality. It is of Sempronius that he thus speaks: ‘Literis Graecis docta:
‘ Pfallere et saltare elegantius, quam necesse est probae: Multa
‘ alia norat, quae instrumenta luxuriae sunt, sed ei cariora semper
‘ omnia quam decus et pudicitia fuit.’ *De Bel. Catilin.*

(11) These things, which are curious, are illustrated by the following passage of *Tacitus*. ‘ Melius quidem adhuc eae civitates,

‘ in

* Mr Burke.

‘ in quibus tantum virgines nubunt, et cum spe votoque uxoris
 ‘ semel transfigitur. Sic unum accipiunt maritum, quomodo unum
 ‘ corpus, unamque vitam, ne ulla cogitatio ultra, ne longior cu-
 ‘ piditas, ne tamquam maritum, sed tamquam matrimonium
 ‘ ament.’ *De mor. Germ. c. 19.*

The matrimonial symbols, as was formerly observed, Note 2. consisted chiefly of an interchange of arms ; but, among those nations of the barbarians who, after their conquests, became accustomed to the manners of the Romans, this usage suffered an early innovation. The symbols of arms were often neglected for those of money. And the betrothing *per solidum et denarium* grew to be a fashion.

Thus, according to the Salic law, a *virgin* was married *per solidum et denarium*. ‘ Convenit ut ego te solido et denario se-
 ‘ cundum legem Salicam sponsare deberem ; quod ita et feci.’
Form. Solen. 75. ap. Lindenbrog. But it was not so with the *widow*. The symbols were augmented ; and it is to be conceived, that their augmentation expressed that of the dower. ‘ Si
 ‘ quis homo moriens viduam dimiserit, et eam quis in conjugium
 ‘ voluerit accipere, antequam eam accipiat Tunginus aut Centenari-
 ‘ us mallum indicent, et in ipso mallo scutum habere debent, et
 ‘ tres homines causas tres demandare ; et tunc ille qui viduam
 ‘ accipere vult, cum tribus testibus qui adprobare debent, *tres scu-
 ‘ lios aequi pensantes et denarium habere debet.*’ *Lex. Sal. tit.*

46. c. 1. The spirit of the German manners opposing second marriages, made it necessary to bribe, as it were, the modesty of the widow.

It deserves remark, that traces of the connection of disgrace with second marriages, as to the women, are to be found in almost all nations ; and this circumstance, so favourable to the modesty of the sex, is a striking proof of their early importance. There were ages of the Grecian and Roman manners when this disgrace prevailed in all its force ; and even among races of men the most savage, the immodesty of second marriages is repressed by particular usages.

‘ Chez les habitans des côtes de Cumana,’ says an ingenious writer, ‘ avant que de brûler le corps du mari, on en sépare la tête ; on la porte à sa veuve pour que la main posée dessus, ‘ elle jure de la conserver précieusement, et *de ne jamais se remarier*. Une veuve, chez les Caffres et les Hotentots, chaque fois qu’elle se remarie, est obligée de se couper un doigt.’ *St. Foix, Essais Historiques sur Paris, tom. 5. p. 177.*

(12) The King, according to Domesday-book, demanded 20 shillings for the marriage of a *widow*, and 10 shillings for that of a *virgin*. ‘ Mulier accipiens quocunque modo maritum, ‘ si vidua dabat Regi 20 s. si puella 10 s. quolibet modo accipie- ‘ ret virum.’ *Domesd. tit. Seropesberic, ap. Spelman, voc. Maritatum.* There is good evidence, that, in several cities of Germany,

many in the middle times, fines were paid to the magistrate on the marriage of a widow. *Heinric. Elem. Jur. Germ. lib. 1. tit. 10. § 222.*

(13) Thus, the ravishing of a widow was punished more severely than that of a virgin. ‘Si quis *virginem* rapuerit contra ipsius voluntatem et parentum ejus, cum. xl. sol. componat, et ‘alios xl. cogatur in fisco. Si autem *viduam* rapuerit quae coacta ‘ex testo egreditur orphanorum, et pro penuria rebus, cum lxxx. ‘sol. componat, et lx. cogatur in fisco.’ *LL. Baivar. tit. 7. l. 6. 7.*

By the way, this early severity against rapes, is a strong confirmation of my general argument, and is direct against the opinions of my Lord Kaims and Mr Mular. The reputation of females suffering, in this way, was forever marked with disgrace. No suitors were now to court their alliance. Yet their minds had received no pollution, and their innocence could not be impeached. Their bodies, however, had been abused; and the loss of value attending this abuse, with the severe punishment of their violators, express clearly the high and natural importance of the sex.

In the Gentoos code, the consideration of the sex is also illustrated by laws too explicit to admit of doubt or cavil, and still more severe.

‘ If a man by force commits adultery with a woman of an equal or inferior cast, against her consent, the magistrate shall confiscate all his possessions, cut off his *penis*, and castrate him, and cause him to be led round the city, mounted upon an ass.

‘ If a man, by cunning and deceit, commits adultery with a woman of an equal or inferior cast, against her consent, the magistrate shall take all his possessions, brand him in the forehead with the mark of the *pudendum muliebre*, and banish him the kingdom.

‘ If a man, by violence, or by cunning, or deceit, or against the woman’s consent, commits adultery with a woman of a superior cast, the magistrate shall deprive him of life.

‘ If a man, either by violence or with her consent, commits adultery with an unmarried girl of a superior cast, the magistrate shall put him to death.’ *Code of Gentoo Laws, ch. 19.*

(14) ‘ *Singulis uxoribus contenti sunt, exceptis admodum paucis, qui non libidine, sed ob nobilitatem, plurimis nuptiis ambitiuntur.*’ *Tacit. de Mor. Germ. c. 18.*

This, says *Montesquien*, explains the reason why the kings of the first race had so great a number of wives. Their marriages were less a proof of incontinence, than a consequence of dignity;

ty; and it would have wounded them, in a tender point, to have deprived them of such a prerogative. This, continues he, explains, likewise, the reason why the example of our kings was not followed by their subjects. *L'esprit des Loix*, liv. 18. c. 25.

I know that my Lord Kaims has spoken of the polygamy of the Germanic nations; but the authority to which he appeals in proof of his notion, is the passage now cited from Tacitus, which is most directly against him. *Sketches*, vol. 1. p. 192. And indeed he has remarked, in another portion of his work, 'That polygamy was never known among the northern nations of Europe.' Vol. 1. p. 316. I am at a loss to reconcile these opinions; and this ingenuous author appears to have forgotten, that, in the states of Germanic and Gothic origin, there were even severe laws against polygamy. *LL. Longob.* lib. 2. tit. 13. l. 1. 3. 5. *LL. Wifgoth.* lib. 3.

The plurality of wives is a consequence of luxury and pride, and does not uniformly distinguish rude times, even in climates which encourage and inspirit the passions. In general, one man is then connected with one woman, and satisfied with her; and it is a proof of the antiquity of monogamy, that, when a plurality of wives is uniformly indulged, which happens not till the ages of property, there is always one of them who seems

more peculiarly the wife; the rest appearing only as so many concubines.

The appetite for the sex, it is to be observed, is not nearly so strong in rude, as in cultivated times. Hardship and fatigue, the great enemies of inordinate love, waste the barbarian. ‘Il est ‘de l’ancien usage,’ says *Lafitau*, ‘parmi la plupart des nations ‘sauvages, de passer la premiere année, après le mariage contracté, ‘sans le consommer; Et quoique les époux pas- ‘sent la nuit ensemble, c’est sans préjudice de cet ancien usage.’ *Tome 1. p. 575.* Ease and good living, on the contrary, flatter the senses in the ages of property. And, an abstinence of this sort would, doubtless, surprise very much the most timid and the most delicate of our virgins.

(15) The fortunate marriages of the relations of Dumnorix, are said, by *Caesar*, to have constituted a great proportion of his power. *De Bel. Gall. lib. 1. c. 18.* In the same author, there is the following notice concerning the wives of Ariovistus. ‘Duæ fuerunt Ariovisti uxores, una Sueca natione, quam do- ‘mum secum adduxerat; altera Norica, regis Vocionis soror, ‘quam in Gallia duxerat, a fratre missam.’ *De Bel. Gall. lib. 1. c. 53.*

Facilius says expressly, that deliberations on the subject of marriage were frequent in the councils of a German state. *De Mor.*

Mor. Germ. c. 22. And, in that singular work, the *Atlantica* of *Rudbeck*, there is this passage. ‘In conciliis Upsalensis decre-
‘tum fuit, ut Olaus Rex Sueoniae filiam suam in matrimonio
‘daret Olao Regi Norvagiae.’ *P. 214.*

(16) After the introduction of Christianity, a multitude of laws were enacted against incestuous marriages ; and these prove, that little delicacy was previously paid to relation or descent. ‘Uxorem habere non licet socrum, nurum, privignam, nover-
‘cam, filiam fratri, filiam sororis, fratri uxorem, uxoris foro-
‘rem : Filii fratrum, filii sororum, inter se nulla praesumptione
‘jungantur.’ *LL. Baiuvar. tit. 6. l. 1.* See also *LL. Longob. lib.*
2. tit. 8. *LL. Alaman. tit. 39.* *LL. Sal. tit. 14. l. 16.*

In Scotland, about the year 1093, ‘it was not uncommon,’ says my *Lord Hailes*, ‘for a man to marry his step-mother, or the widow of his brother.’ The learned and ingenious author adds, ‘I presume that this was not owing to vague lust, but to avarice ; for it relieved the heir of a jointure.’ *Annals of Scotland*, p. 39. The observation is acute ; but I am afraid that, though in some instances it might be just, it will not vindicate the Scots from the grossness and indecency which the prevalence of the custom fixes upon them. Even in France, at a later period, an. 1454, the Count D’Armagnac married publicly his own sister. *St Foix, Eff. H. vol. 5. p. 130.* The strange liberties taken by ancient nations are sufficiently known.

A Persian acted in conformity to the laws, and to justice, when he married his mother ; and an Egyptian when he married his sister.

In times of refinement and delicacy, virtue takes the alarm, even at the recital of such facts ; but the philosopher, struck with their universality over all societies, however distant and distinct, is disposed to inquire, Where it is that nature has placed her barriers ; and what, on this head, in the codes of nations, is to be explained by natural law, and what by a policy civil and religious ? The topic is full of curiosity, but not for the present purpose.

CHAP-

C H A P T E R II.

S E C T I O N I.

(1) **T**HE total change produced in the condition of Europe by the settlements of the barbarous nations, is ascribed by many writers, and by Dr Robertson in particular, to the destructive violence with which they carried on their conquests, and to the havoc which they made from one extremity of this quarter of the globe to the other. *History of Charles V.* vol. 1. p. 11. 197. 198.

It is to be remembered, notwithstanding, that the conquerors incorporated themselves, in some provinces, with the vanquished; that much of the havoc and violence so pompously described by ancient historians, is to be referred to the wars they carried on among themselves; and that, where havoc and violence were least known, the change produced was, with the exception of a few circumstances, as general and complete as where they were experienced

experienced in the greatest degree. Thus, chivalry and the feudal institutions prevailed, in every step of their progress, in every country of Europe.

In illustration, indeed, of his opinion, Dr Robertson has said, that where havoc prevailed in no great degree, as in England, on the Norman invasion, the antient inhabitants retained their own manners. It is certainly very true that the Anglo-Saxons retained their own manners. This, however, was no effect of the cause he has mentioned. The Norman revolution was not a conquest*. A victory was obtained by Duke William over Harold and his followers ; but no victory was obtained over the people of England. And, even on the hypothesis that the Duke of Normandy had *conquered* England, his illustration is without force. For the manners and policy of the Normans were the same with those of the Anglo-Saxons ; with this difference, that the former were, in some measure, a more improved people.

The completeness of the revolution consequent on the settlements of the barbarians, is chiefly to be ascribed, as I observe in the text, to the immense difference of manners in the conquerors and the conquered. The former were in a condition of growing civility ; the latter in a state of hopeless corruption. The German was approaching to perfection : The Roman had
been

* See a Discourse prefixed to Dr Sullivan's Lectures.

ric nations, appear to have had lands of partition or allodial property. *LL. Ripuar.* tit. 56. *LL. Angl. et Werin.* tit. 6. *LL. Baivvar.* tit. 2. c. 1. l. 3. tit. 11. c. 5. tit. 17. l. 2. *Capit. Kar. et Lud.* lib. 3. t. 20. *Marculph. Form.* 16. 18. 51. 62. 67. *ap. Lindenbrog.*

Some writers affirm, that the Salic lands were lands of *lot* or *partition*, and yet contend that they were *feudal*. This is certainly an absurdity. It is to be confessed, notwithstanding, that Du Cange, and many lawyers of great ability, have adopted this notion. *Differt. 17. sur l'Histoire de St. Louis*, p. 244. *Selden*, vol. 3. p. 1009 *. The authority against them is most express and pointed. It is the text itself of the Salic law which actually treats *de alode*, and refers to no property that was not *allodial*. *LL. Sal. ap. Lindenbrog.* p. 342. What confounded Du Cange, was the following celebrated law of this text. ‘*De terra vero*
‘ *Salica*

* Selden observes, that ‘the best interpretation of *terra Salica*, is by our ‘*knight's fee*, or land holden by *knight's service*.’ I have an infinite veneration for the learning and abilities of this great man. I cannot, however, but differ from him on this occasion. The *knight's fee* and *knight's service*, were late inventions in the history of fiefs, and cannot be carried back to the early æra of the Salic law. Even if they could, they would still be ineffectual to support his conclusion.

‘Salica nulla portio hereditatis *mulieri* veniat ; sed ad *virilern* ‘*sexum* tota *terrae hereditas* perveniat.’ He knew that women could not, in the commencement of fiefs, pretend to lands which were held by a military tenure ; and, as they are thus barred from the Salic lands, he thence conceived that these must be *feudal*.

But the circumstance of the exclusion of the women from the Salic lands is, by no means, to be accounted for on *feudal* principles. The women were excluded from property while the Germans were in their forests ; and this law or usage they carried into their conquests. It is thence that, in the lands of *lot* or *partition*, the women were not considered ; and it is thus, that this difficulty in the Salic text is to be explained, without the necessity of conceiving the feudality of the Salic lands, in contradiction to the Salic law.

Though the barbarians respected highly their women, the admission of them to land was altogether a new idea. For if, leaving the Salic law, we inquire into the allodial property, and the allodial laws of the other tribes, we shall find, that, even in these, the women were not admitted to land while there existed any male. The ideas of the barbarians required to enlarge before this admission had place, and before they could so far violate their antient customs. The innovation, as might be expected, was gradual. In the title, accordingly, *de Alodibus* in the

Ripuarian

Ripuarian text, we read, ‘Dum virilis sexus extiterit, *femina* in
‘hereditatem aviaticam non succedat.’ *Lindenbrog.* p. 460. See
also *LL. Anglor. et Werinor.* tit. 6. It is, I conceive, by this
and similar ordinances, that the celebrated Salic law, which im-
posed on Du Cange, and on so many lawyers, is to be inter-
preted. Among the Salians and Franks, as well as among the
other barbarous nations, when there were no males, the women
were admitted to the property of the lands of *lot* or *partition*.

After having made these remarks, it is fit I should give some
account of the word *Allodium*, or *Alode*; and a learned Judge,
who is studious to cultivate literature in the intervals of business,
and who has distinguished himself by laborious and instructive
compositions in an idle and a dissipated age, has done me the
honour to present me with the following communication on
this subject.

‘ *Al-od*, in the Latin of the lower ages *allodium*; hence the
‘ adjective *allodialis*; and hence, from the analogy of language,
‘ *allodially*, and *allodiality* may be formed. Of *Al-od* the
‘ French have made *Aloud*, *aleu*.

‘ As to the etymology of the word, there is a variety of opi-
‘ nions; for learned men are apt to reject obvious etymologies,
‘ and to prefer those which are more remote. It would seem to
‘ be.

‘ be a good rule in such matters, that “ the etymology which is
“ nearest to the word, is the most probable.”

‘ *Al* is *totus, integer, et absolutus*. There is no occasion for
‘ proving this: The sense is in daily use among the northern
‘ nations of Europe. *Od* is *status*, or, *possessio*. The Scottish word
‘ *had*, and the English *hold*, are derived from this source, and
‘ the word itself is still visible in the English compounds, *man-
hood, sister-hood, maiden-hood, &c.* The Anglo-Saxon word,
‘ corresponding to this, is *Hod, status* or *possessio*. Thus, *Al-od*,
‘ is *totus integer et absolutus status*, or *tota integra et absoluta pos-
sessio*.

‘ The etymology of *Al-od* confirms the opinion of Selden and
‘ others as to the etymology of *Feod*, in the Latin of the lower
‘ ages *Feodum, Feudum*. *Fe* is *beneficium* or *stipendium*; *Od* or
‘ *Hod*, is *status*; therefore, *Feod* is *status stipendiarius*, or *possessio
stipendiaria*. *Odal* is *Alod* inverted, *status integer*, or *possessio
tota et absoluta*.

‘ There is no difference between *odal* and *udal*. The Scots
‘ turned the Norwegian *ore*, a denomination of weight, into *ure*,
‘ and, in like manner, they turned *odal* into *udal*. If the Norve-
‘ gian *o* was pronounced as *oe*, the change is scarcely perceptible.
‘ After the same manner the French have turned *alod* into *aleud*.

been declining from it. They mutually despised one another, and were urged on in different directions. The former, therefore, yielding to, and governed by the manners to which he had been accustomed, became necessarily the founder of new and peculiar establishments.

(2) 'Agri pro numero cultorum ab *univerfis* per *vices* occupantur, quos mox inter se secundum dignationem partiuntur. Facilitatem partiendi camporum spatia praestant. Arva per annos mutant, et supereft ager.' *Tacit. de Mor. Germ. c. 26.*

This interesting information is well illustrated in the following relation from *Caesar*. ' Sueorum gens est longe maxima et bellicosissima Germanorum omnium. Ii centum pagos habere dicuntur; ex quibus quotannis singula millia armatorum, bellandi causa, suis ex finibus educunt. Reliqui domi manent: Pro se atque illis colunt. Hi rursus invicem anno post in armis sunt: Illi domi remanent. Sic neque agricultura, neque ratio, neque usus belli intermittitur: Sed privati ac separati agri apud eos nihil est: Neque longius anno remanere uno in loco incolendi causa licet; neque multum frumento, sed maximam partem lacte atque pecore vivunt, multumque sunt in venationibus.' *De Bell. Gall. lib. 4. c. 1.*

(3) From some remarkable passages in *Tacitus*, it is to be gathered, that, even in his age, the Germans were beginning to

have an idea of a *private* property in land. This improvement would probably take place among the princes or chiefs, and in those districts which joined to the Roman frontiers ; and it is to be conceived, that the portions of ground first appropriated, would be those around the cabins or huts of individuals. For each hut was surrounded with an *enclosure*. And it was doubtless out of this enclosure that the German slave, being assigned land by his master, paid, in return, like a tenant, a proportion of corn, cattle, or cloth. ‘ *Ceteris servis, non in nostrum morem descriptis per familiam ministeriis utuntur. Suam quisque sedit, siuos penates regit. Frumenti modum dominus, aut pecoris, aut vestis, ut colono injungit : Et servus hactenus paret.* ’ *Tacit. de Mor. Germ. c. 25.* This appropriation of land, and exertion over it, would spread by degrees, and enlarge the notions of property.

In fact, it would seem, that this conduct was observed after the German conquests ; and that the German *enclosure*, or the *lands of the house*, and the assignment of them to slaves or servants, were usual. A proprietor or noble retained, to be cultivated by his servants, for domestic use and hospitality, the land which was *inter curtem*, or within view of the house or hall. What was out of the view of the house or hall, was given out in tenancy. Hence, among the Anglo-Saxons, the distinction of *inland* and *outland*. The inland, was the land *inter curtem*, or the *land of the house* : The outland was the land out of the view of

of the house*. Brithic, the rich Anglo-Saxon, had inland and outland, and disposed of them, in his will, to different persons†.

What is worthy of observation, the method of paying *in kind*, practised in Germany, and mentioned by Tacitus, continued also in the fettlements of the barbarians, and even after they had become acquainted with coinage. Thus, in estates which had been long in any fainly, there were payments in poultry, and in necessaries for the house. *Du Cange Gloss. voc. Gallinagium et Henedpeny.* At this hour, both in England and Scotland, there are relics of this usage.

In England, it was not till the age of Henry I. that the rents due to the crown were paid in money. 'In the early 'days,' says *Madox*, 'next after the Norman conquest, (if we 'are rightly informed), there was very little money, *in specie*, 'in the realm. Then the tenants of knights fees answered

C c 2

' to

* ' *Inland, et Inlandum.* Terra dominicalis, pars manerii dominica. Vox ' Saxonum, *terram interiorum* significans, nam quae colonis et tenantibus ' concedatur, *utland* dicta fuit, hoc est *ierra exterior*, hodie *tenementalis*. ' *Spelman, Gloss. p. 316.*

† *Lambard, Perambulation of Kent.* ' *Lego,* says *Brithic*, ' *terras domi- ' nicales Wulfego, tenementales Elfego.*'

' to their Lords by military services ; and the tenants in socage
 ' lands and demeanes (in great measure) by work and provisions.
 ' The ingenious authour of the Dialogue concerning the Exche-
 ' quer tells us, that, from the time of the Norman conquest, till
 ' the reign of King Henry I. the rents or ferms due to the king
 ' were wont to be rendered *in provisions and necessaries for his*
 ' *household**: And that, in King Henry the First's time, the
 ' same were changed into *money*. Afterwards, in the succeeding
 ' times, the revenue of the crown was answered or paid, *chiefly*
 ' *in gold and silver*; sometimes in palfreys, destriers, chasseurs, le-
 ' veriers, hawks, and falcons, (to wit, in horses, dogs, and birds
 ' of game of divers sorts), and in things of other kinds.' *Hist. of*
the Exchequer, vol. 1. p. 272.

(4) *Allodial* lands were enjoyed in full property, and are therefore opposed to *feudal* or *beneficiary* possessions, which were received with limitations, and under the burden of military service to the *grantors*.

The Ripuarians, the Burgundians, and, indeed, all the barbaric

* In the Saxon times of King Ina, the provisions paid for ten hides of land were as follows: ' Ex decem hydis, ad nutriendum, decem dolia mellis, tre-
 ' centi panes, duodecim amphorae Wallicae cerevisiae, triginta simplices, duo
 ' adulti arietes, vel decem verveces, decem anseres, viginti gallinae, decem
 ' casei, amphora plena butyro, quinque salmones, viginti librae pondo pa-
 ' buli, et centum anguillae solvantur.' *LL. Inae ap. Wilkins*, p. 25.

‘ It may be objected, that there are two syllables more in ‘ *allodial* than in *odal* or *udal*; and that, although etymologists often drop an embarrassing syllable or two, yet that such liberties are not allowable. The answer is obvious. *Allodial* is ‘ an adjective; and the word *subject*, or *land*, or something similar, is understood. But *odal* or *udal* is a substantive; and it is ‘ only from ignorance or misapprehension, that the word is used ‘ as an adjective. Thus, in propriety of speech, we say, ‘ The “ lands in Orkney are to be considered as *udal*;’ although, in ‘ common speech, we say, ‘ The *udal lands* of Orkney,’ and the “ *udal possession* in Orkney.”

(5) Dr Robertson has affirmed, that the barbarians, while in their original seats, were not, in consequence of the condition of the landed property, brought under any positive or formal obligation to serve the community. *Hist. of Charles V.* vol. 1. p. 213.

It is obvious, however, that the partition of land received by the individual from the tribe, subjected him to serve the community. The person who did not serve it had no claim to any partition. Persons under the military age had no partitions, because they could give no service. Persons, who had attained this age, could give service, and entitle themselves to partitions. The former were parts of the *family*, the latter were members of the *republic*. See Note 2. and compare it with *Tacit. de Mor. Germ.*

c. 13. Of this law of partition, it was even a consequence, that the coward was a criminal, because he could give no service, and was unable to entitle himself to a subsistence or partition. He was therefore deemed unworthy of existence, and put to death, or expelled beyond the frontiers of his nation.
Tacit. de Mor. Germ. c. 12.

I have said, that the lands of lot or partition, of which the grant or use was the distinction of the freeman and the citizen in the days of Tacitus, were also given after the conquests of the barbarians, under the general obligation of serving the community. And here is my evidence.

‘ *Quicunque liber homo a comite suo fuerit ammonitus, aut ministris ejus, ad patriam defendendam, et ire neglexerit, et exercitus supervenerit ad istius regni vastationem vel contrarietatem, fidelium nostrorum capitali subjaceat sententiae.*’ *Capitularia apud Baluz. tom. 2. p. 325.*

‘ *Si aliquis in alio suo quiete vivere voluerit, nullus ei aliud quod impedimentum facere praesumat, neque aliud aliquid ab eo requiratur, nisi solummodo ut ad patriae defensionem perget.*’
Capit. Car. Calv. Ibid. p. 264.

‘ *Et qui ad defensionem patriae non occurrerint, secundum antiquam*

'quam consuetudinem et capitulorum constitutionem judicentur.'
Capit. Car. Cal. tit. 36. c. 27. Ibid. p. 187.

Hence it is to be concluded, that the stipulation of serving the community was very *antient*; and thus too, the opinion I maintain, that this obligation was known to the old Germans, receives a confirmation. In reality, the sense of the obligation must have been stronger *before* than *after* their conquests. The citizen of a small community enters with ease into its views, and is zealous to promote them. The arrangements, on the contrary, of a great kingdom, are not easily perceived. A plain individual does not know the motives and the agents which put every thing into motion. His attention is more turned from the public, and penal regulations are necessary to preserve him in his duty. History confirms this remark. For, early after the barbaric conquests, regulations of this kind were made; and *allodial* proprietors, to avoid serving the community, devised the fraud of assigning their lands to the church, and of holding them under its exemptions and immunities.

Those, it is observable, who held possessions merely *allodial*, could only be called out in foreign wars, and against the enemies of the state. As they held of no superior or lord, they had no concern in private quarrels, and made no part in the feudal association. This circumstance, if judged by modern ideas,

was advantageous. It was, in fact, however, the reverse, and operated as a cause of the conversion of *allodium* into *tenure*.

(6) *Monfr. Bignon*, in his notes to *Marculphus*, expresses, with a delicate precision, the distinction between *allodial* lands, or the lands of *partition*, and the lands of the *fisc*. ‘*Omnia namque praedia, aut propria erant, aut fiscalia. Propria seu proprietates dicebantur quae nullius juri obnoxia erant, sed optimo maximo jure possidebantur, ideoque ad heredes transibant. Fiscalia vero, beneficia sive fisci vocabantur, quae a rege ut plurimum, posteaque ab aliis, ita concedebantur, ut certis legibus servitiisque obnoxia, cum vita accipientis finirentur.*’ *Not. ad Marcupb. ap. Baluz. tom. 2. p. 875.*

It is even from *fiscus* that the term *fief* was formed; and, though the lands of the *fisc* meant originally only the benefices granted out by the sovereign, they came to express the subinfeudations of the crown-vassals. *Du Cange, voce Fiscus, Munus Regium. Affes et bons usages du Royaume de Jerusalem, avec des notes par Gaspard Thaumas de la Thaumassiere, p. 103. 245.*

(7) ‘*Principes jura per pagos vicosque reddunt. . . . Insignis nobilitas aut magna patrum merita, principis dignationem etiam adolescentulis affignant. Ceteris rebustioribus ac jampri- dem probatis aggregantur. . . . Magna comitum aemulatio, quibus*

‘ quibus primus apud principem suum locus ; et principum cui
 ‘ plurimi et acerrimi comites. Hae dignitas, hae vires, magno
 ‘ semper electorum juvenum globo circumdari, in pace decus, in
 ‘ bello praesidium. . . . Cern ventum in aciem, turpe princi-
 ‘ pi virtute vincit, turpe comitatui virtutem principis non adae-
 ‘ quare. . . . illum defendere, tueri, tua quicquid fortia facta glo-
 ‘ riae ejus assignare, praecipua a sacramentum est. Principes pro
 ‘ victoria pugnant ; comites pro principe.’ *Tacit. de Mor. Germ.*
c. 12. 13. 14.

(8) Of the notion that tribes were the *vassals* of tribes, I have exhibited the most convincing proofs in another treatise. *Hist. Dissert. concerning the Antiq. of the Eng. Constit. part 2.* As the subject, however, is highly curious and important, I shall here offer some additional observations concerning it.

The great bond of the confederacies, and the attachments of the states of the Gauls and Germans, was the *land* assigned by a *superior* community to an *inferior* one. In consequence of this assignment, the latter owed service in war to the former, and was entitled to its protection. In the language of *Cæsar*, it was the *client* tribe. While land was yet the property of nations, and unconnected with individuals, the idea was natural, and almost unavoidable. Ariovitus, a prince of a German community, having, with his chiefs and retainers, made a conquest in Gaul, the territory of the vanquished people became the proper-

ty of his nation ; and, it was about to bestow a large tract of the acquisition on the Harudes, under the burden of their military aid or assistance, when Caesar interfered in the Gaulic affairs. *Caesar, de Bell. Gall. lib. 1. c. 35—46.*

The idea of tribes in union, without their mutually furnishing *protection* and *assistance*, and without the medium of a grant of *land*, could not be conceived by the German and Gaulic nations. The *client* or *vassal* tribes of Ariovitus, were the Marcomani, Tribocci, Vangiones, Harudes, Nemetes, and Sedusii. *Caesar, de Bell. Gall. lib. 1. c. 51.* The Ubii, at one period, were the *vassal* tribe of the Suevi. *Ib. lib. 4. c. 3.* In an after period, when the Romans imitated the manners of the Gauls and Germans, they were assigned *land* on the banks of the Rhine, under the obligation of *military* service. ‘*Super ipsam Rheni ripam collocati, ut arcerent, non ut custodirentur.*’ *Tacit. de Mor. Germ. c. 28.* Caesar, at the request of the *Ædui*, permitted the Boii to remain in Gaul ; and they became the clients or confederates of that people, who assigned them *land* on their confines. ‘*Boios, potentibus Æduis, quod egregia virtute erant, ut in finibus suis collocarent, concessit ; quibus illi agros dederunt.*’ *De Bell. Gall. lib. 1. c. 28.* The extent of land allotted by a superior community to an inferior one, was proportioned to the numbers and the valour of the latter. And, it was this way of thinking which actuated the Helvetii, when they said, that their territories were not suited to their populousness and

and military glory. ‘ Pro multitudine autem hominum, et pro gloria belli atque fortitudinis, anguitos se fines haecre arbitrabantur.’ *Id. lib. 1. c. 2.*

Thus, the state of land among the Gaulic and German nations directed their *political* condition. This circumstance escaped not the Romans; and the use made of its knowledge by the Emperors, though little attended to, is worthy of remark. To a body of the Vandals, Constantine, with a view to the aid of their arms, assigned a portion of Pannonia. The assignment of land by the Romans to the Burgundians, that they might assist them in opposing the Visigoths, gave rise to the Burgundian empire in Gaul. And Justinian granted the lands and possessions of the Ostrogoths in Pannonia to the Longobards, under the burden of their defending that country against the Gepidae, the Heruli, and other barbarous nations. *Journal. de Reb. Get. c. 22. Caffiodor. Chron. Procop. lib. 3.*

Amidst a multitude of examples, to the same purpose, which might be produced, it is proper to take notice of the monarchy of the Franks. Different nations, overpowered by the Franks, became parts of their monarchy, by receiving possessions from them, and acknowledging their superiority. For the lands and protection afforded them, they gave allegiance and service. In other respects they acted under their own dukes or princes, and under their own institutions. I speak of the principality or

duchy

duchies of Bavaria, Aquitain, and Suabia. The Bojarii, Bojarii, or Boii, for so the Bavarians are called in writers of the middle ages, were conquered by the Franks, and, accepting lands from them, acknowledged their superiority. An old historian, recording this transaction, has these words : ‘ In bellis auxilio Fran-
‘ cis sunt Boii ; eosdem pro amicis et hostibus habeant ; ceterum
‘ suis institutis ac moribus liberi vivant.’ *Aventinus, Annal. Boior. lib. 3.* This connection or vassalage is even expressed in their laws. *LL. Baiuvar. tit. 2. c. 1. ap. Lindenbrog. p. 404.* Such also was the case of the Dukes of Aquitain and Suabia. Under the Franconian kings of the first race, they owed fidelity and military service in war, for the lands they enjoyed, and yet governed in their own dominions. These things mark the attachment of nations to their antient usages, and illustrate the idea that communities were first the vassals of communities.

What is not incurious, one of the greatest difficulties in developing the history of the barbaric tribes, has its source in these connections I have mentioned. The inferior, or vassal tribes, are often meant and recorded under the names of the superior ones. Thus, under the general appellation of *Gothi*, there are included the Thuringi, Gepidae, Pucini, Sciri, and other tribes. The historical confusions that were necessarily to arise from this practice are many, and often not to be disentangled.

(9) It

(9) It is observable, that the old German states affected, from grandeur, to have around them a vast extent of *waste* territory.
‘Una ex parte a Suevis circiter millia passuum DC agri *wacare*
‘dicuntur.’ *Caesar, de Bell. Gall. lib. 4. c. 2.* ‘Civitatibus
‘maxima laus est quam latissimas circum se vastatis finibus *foli-*
‘*tudines* habere.’ *Id. lib. 6. c. 22.* ‘Bella cum finitimi gerunt,
‘ut quae circa ipsos jacent *wasta* sint.’ *Mela, lib. 3.*

What is remarkable, after land was connected with individuals, and when chiefs distributed portions of their possessions to their followers, they affected also *wastes* of this kind. The Lord of a manor, after having assigned to his servants a tract of ground for the maintenance of his house and hospitality, gave out other divisions to his vassals and tenants, for the support of his political greatness; and these purposes being answered, a large proportion of territory remained often unemployed by him. This *waste* dominion gave an idea of his power, and served to excite, in the stranger, a sentiment of terror. On this tract of land, the inhabitants of the hamlet, connected with his castle, were tempted to feed their cattle. In the course of time, he lost all connection with it. Their connection was recent and in use. Hence *common pasture* and *commons*.

I will venture another conjecture. It was, perhaps, from the idea of magnificence attending the possession of a vast portion of uncultivated territory, more than for the purposes of hunting,

that the kings of Europe affected, of old, to have extensive forests. A deer-park is still flattering to the *magnificence* of the rich, in proportion to its extensiveness; though hunting be no amusement of the proprietor.

(10) It has puzzled the learned to discover the nation of the barbarians which first gave a beginning to fiefs. No inquiry could be more frivolous. In all of them they must have appeared about the same period. And they prevailed in all of them in consequence of the similarity of their situation on their conquests, and in consequence of their being governed by the same customs. It is not, therefore, to the principle of imitation that their universality is to be ascribed.

The annals of France make mention of fiefs in the age of Childebert. The Longobards, at an early period, introduced them into Italy; and the customs and laws which relate to them seem to have advanced rapidly among this people. *Giannone, Hist. of Naples, book 4. sect. 3.* In England, there is little doubt that the feudal law was known in the Saxon times; and on this subject I refer, with pleasure, to what has been lately advanced by Mr Whitaker, in his History of Manchester; a book valuable for deep learning, original thought, and uncommon ingenuity.

In Spain, the introduction of the feudal tenures preceded the devastations of the Saracens or Moors, which began in the year 710. Among the Goths, who established the monarchy of Spain, lands were granted for service and attachment; and the receiver was the retainer of the grantor. He was said to be *in patrocinio*; and, if he refused his service, he forfeited his grant. It also appears, that the retainer, or vassal, swore fealty to his patron or lord. And it was on this scheme that their militia was regulated. *LL. Visigoth. lib. 5. tit. 3. l. 4. tit. 7. l. 20.*

The Visigothic laws were first published by the celebrated Pithoeus, and are chiefly to be valued on account of their high antiquity. But how they came to survive the Moorish conquests, is an incident which I cannot explain. They served as the mine, and gave materials for the code of Spanish jurisprudence, termed the *forum judicum*, or the *fuero juzgo*; a circumstance which seems to prove their authenticity, and which the learned Mr Barrington must have forgot, when he conceived the latter to be the most antient collection of laws in Europe. *Observations on the Statutes, 3d edit. p. 9.*

S E C T I O N II.

(1) **T**ERRA pecorum foecunda, sed plerumque improcera: Ne armentis quidem suus honor, aut gloria frontis: Numero gaudent: Eaeque *solae et gratissimae opes sunt.* *Tacit. de Mor. Germ. c. 5.*

(2) My Lord Kaims ascribes to the meanness of women, and to the disgrace in which they are held, their want of property in rude times. They appear, notwithstanding, to be in high estimation in such times; and their poverty, we see, or their want of property, is no mark or consequence of their meanness and disgrace; but a result of the nature of things. *Sketches, vol. 1. p. 203.*

(3) The eldest son, it would appear, came in place of the father, and continued the family. 'Inter familiam,' says *Tacitus*, 'et penates, et jura successionum, equi traduntur: Excipit filius, non ut cetera maximus natu, sed prout ferox bello et melior.' *De Mor. Germ. c. 32.* This testimony in favour of the eldest

eldest son, and the right of primogeniture, is the more strong, as being included in an exception to the general rule. I know that Sir Henry Spelman, in his *Glossary* *, Mr Harris, in his *History of Kent* †, Mr Lombard, in his *Perambulation* of the same county ‡, and Mr Barrington, in his *Observations on the Statutes* ‖, have given it as their opinion, that, in Germany, the sons succeeded equally to the father; and it is common to account, in that way, for the origin of the custom of *gavel-kind* §, which prevailed in Kent, and in other counties of England. The words, however, of *Tacitus* already cited are a demonstration of the impropriety of these notions.

It is true, notwithstanding, that the authors under remark found or rely upon another passage of the same writer; but I conceive that the sense of it must have escaped them. The passage is as follows. ‘Heredes successoresque sui cuique liberi: ‘Et nullum testamentum: Si liberi non sunt, proximus gradus ‘in possessione, fratres, patrui, avunculi.’ *De Mor. Germ.* c. 20.

Here,

* *Voc. Gavelcum.*

† p. 457.

‡ p. 584.

|| p. 115.

3d Edit.

§ ‘*Gavelcum, Gavelkind.*] Prisca Anglo-Saxonum consuetudo e Germania delecta, qua omnes filii ex aquis portionibus, patris adcent haereditatem (ut filiae solent, prole mascula deficiente). Fratres similiter defuncto sine sibole fratre, et nullo existente fratre, sorores pariter.’ *Schem. Gleij.* p. 252.

Here, in reality, even allowing that the Germans had been acquainted with a property in land, which they constantly suppose, there is no mention of the *equal partition* of it. The children must have succeeded singly and in course; in defect of these, the brothers; and, on the failure of them, the uncles.

This passage, and the former, throw mutually a light to one another; and, from the consideration of both, I think it clear, that the meaning I impute to them is justly to be inferred.

A difficulty, however, more knotty presents itself. As land was among these nations the property of the state, to what does *Tacitus* allude in the passage before us? Conjectures are to be hazarded where proofs are wanting. In general, I should fancy, he must refer to moveables; and, perhaps, he may allude to the *German house* and the *enclosure* connected with it. ‘*Colunt dis-creti ac diversi ut fons, ut campus, ut nemus placuit.*’ ‘*Suam quisque domum spatio circumdat.*’ *Tacit. de Mor. Germ. c. 16.* At least, it is not unnatural to think, that the cabin and its enclosure, as the ideas of property evolved, might be considered as appertaining more peculiarly to individuals, and that thence continuing in their possession, they might go to their posterity.

It was thus in other rude communities. Among the Hindoos, it appears, by very curious laws, that the landed property first acquired by individuals, was what is termed 'The glebe-lands, houses, and orchards.' *Code of Gentoo laws, ch. 3.* In Otaheite, and in Eastern Island, or Davis's Land, there were plantations laid out by line, of which the beauty struck Captain Cook. These, he conjectures, were the *private property* of the chiefs. *Voyage round the World, vol. 1. p. 294.* His conjecture is very solid. These spots correspond to the enclosure of the German house, and to the glebe-lands of the Gentoo.

(4) 'Dotem non uxor marito, sed uxor *maritus* offert.' *Tacit. de Mor. Germ. c. 18.* This remarkable usage continued after the German nations had made conquests, and is every where to be met with in their laws.

'Non amplius unusquisque in puerulae vel mulieris nomine *dotis* titulo conferat vel conseribat, quam quod decimam partem rerum suarum esse constiterit.' *LL. Wifigoth. lib. 3. tit. 1. l. 5.*

'Quia mulieres, quibus dudum concessum fuerat de suis *dotibus* judicare, quod voluissent quaedam reperiuntur, spretis filiis vel nepotibus, easdem *dotes* illis conferre, cum quibus constituerit nequiter eas vixisse: Ideo necesse est illos exinde percipere commodum pro quibus creandis fuerat assumptum conjugium.

'Denique

‘ Denique constituentes decernimus, ut de *dote* sua mulier habens
 ‘ filios vel nepotes, seu causa mercedis ecclesiis vel libertis con-
 ‘ ferre, sive cuique voluerit, non amplius quam de quarta parte
 ‘ potestate habeat. Nam tres partes legitimis filiis aut nepoti-
 ‘ bus, seu sit unus sive forsitan plures, absque dubio reliqua
 ‘ est. De tota interim *dote*, tunc facere quid voluerit, erit mu-
 ‘ lieri potestas, quando nullum legitimum filium, filiamve, nepo-
 ‘ tem vel neptem superstitem reliquerit. Verum tamen faemi-
 ‘ nas, quas contigerit duobus viris aut amplius nubere, atque
 ‘ ex eis filios procreare, non eis licitum erit *dotem* ab alio ma-
 ‘ rito acceptam, filiis aut nepotibus ex alio viro genitis dare: Sed
 ‘ unusquisque filius filiave, nepos aut neptis, ex ipsa linea pro-
 ‘ creati, *dotem* quam avus aut pater illorum concederat, post muli-
 ‘ eris obitum per omnia consequuturi sunt.’ *LL. Wifigoth. lib. 4.*
 ‘ *tit. 5. l. 2. ap. Lindenbrog.*

‘ Mulier si ad alias nuptias transierit, omnia perdat: *Dote*
 ‘ tamen sua quam a marito suo acceperat, quamdiu vixerit, uta-
 ‘ tur, filio proprietate servata.’ *LL. Burgund. tit. 62. l. 2.* See
 farther *LL. Wifigoth. lib. 3. tit. 2. l. 8. lib. 5. tit. 2. l. 4. LL.*
Ripuar. tit. 37. LL. Saxon. tit. 7. LL. Longobard. lib. 1. tit.
 4. The curious reader may also consult the forms or writings
 which constituted the *dos*, or dower. *Form. Solen. ap. Baluz.*
tom. 2. See *Appendix, No. 1.*

In England, the doctrines and history of the *dos* are to be seen in *Glanvil*, *Bracton*, *Britton*, in the book called *Fleta*, and in *Littleton*. ‘*Dos*, or *dower*,’ says my Lord *Coke*, ‘in the common law, is taken for that portion of lands or tenements which the wife hath for terme of her life of the lands or tenements of her husband after his decease, for the sustenance of herselfe, and the nurture and education of her children.’ 1. *Instit.* p. 31. It is curious to find in the woods of Germany, a rite or custom that makes a figure in all the laws of Europe.

My Lord Kaims, whom I am ashamed to contradict so often, has strangely misunderstood this subject. ‘In Germany,’ says he, ‘when Tacitus wrote, very few traces remained of polygamy. Severa illic matrimonia, nec ullam morum partem magis laudaveris; nam prope soli barbarorum singulis uxoriibus contenti sunt, exceptis admodum paucis, qui non libidine, sed ob nobilitatem, plurimis nuptiis ambiuntur. When polygamy was in that country so little practised, we may be certain, the purchasing wives did not remain in vigour. And Tacitus accordingly, mentioning the general rule, dotem non uxor marito, sed uxor maritus offert, explains it away by observing, that the only *dos* given by the bridegroom, were marriage-presents, and that he at the same time received marriage-presents on the bride’s part.’ *Sketches*, vol. 1. p. 192.

It would pain me to open up, with minuteness, all the mistakes which are crowded into this passage. I shall just glance

at them. Polygamy, in fact, never prevailed among the Germans ; and of this, the treatise of Tacitus, and the laws of the barbarians after their conquests, are the most striking and decisive proofs. See *Ch. 1. Sect. 3. Note 14.* Neither were women *bought* in Germany, nor does Tacitus affirm, that the *dos* consisted of marriage-presents. The interchange of presents by the married couple and the *dos*, were separate and distinct. The intention of the former I have already explained. See *Ch. 1. Sect. 3. Note 2.* What the latter was, I have just now laid ; and I appeal to the authorities which support my notion.

The source of all these errors is, the idea entertained and inculcated by this eminent writer, that the women, in rude times, are of so little consideration, that they are objects of traffic. Hence he conceived, that the *dos* must be the *purchase-money* of the wife. That it was not so, we have seen ; but, as the opinion has been pretty generally received, and has got the sanction of Professor Millar, as well as that of his Lordship, it is proper to consider its propriety with some attention.

Though it every where appears, from the examination of the barbaric laws, and from the books of the earliest lawyers, that the *dos* or *dower* was the provision allotted for the maintenance of the wife, it is not to be denied, that, in antient legal monuments, there occur the expressions *donatio nuptialis*, *pretium uxoris*, *et pretium dotis*. And these, I perceive, have contributed to induce Mr Millar to go into the fancy, that antiently, in Europe,

Europe, the *dos* was the price, or purchase-money of the wife. *Observations on the distinction of ranks*, p. 30. 2. edit. If, however, I am not very widely mistaken, these expressions apply, in no case, to the purchase-money of the wife ; but express the provision made for her, in the event of the death of the husband. This, I think, appears from the laws of the barbarians.

‘ Si qua mulier duntaxat Burgundia post mariti mortem ad secundas aut tertias nuptias, ut adsolet fieri, fortasse transierit, et filios habuerit, ex omni conjugio, *donationem nuptialem* dum advivit usu fructu possideat : Post ejus mortem ad unumquemque filium, quod pater ejus dederat, revertatur : Ita ut mater nec donandi, nec vendendi, nec alienandi de his rebus quas in *donatione nuptiali* accepit, habeat potestatem.’ *LL. Burgund. tit.*

24.

It is said of one Folco, that he gave to his wife Gerlint all he had ; ‘ Omnia sua propter *preium* in mane quando surrexit.’ *Giannone, Hist. of Naples*, vol. 1. p. 274. But this was not the price or value of the wife. It was the morgengabe, or morning-present, about which there is so much in the barbaric laws, and of which the extravagance was so great, that regulations were made to repress it.

As to the expression, *preium dotis*, we meet with it in the following ordinance. ‘ Si puella ingenua ad quemlibet ingenuum

‘venerit ea conditione, ut eum sibi maritum acquirat, prius cum
 ‘puellae parentibus conloquatur ; et si obtinuerit, ut eam uxo-
 ‘rem habere possit, *precium dotis* parentibus ejus, ut justum est,
 ‘impleatur.’ *LL. Visigoth. lib. 3. tit. 2. l. 8.* The dower, it
 seems, was at times given to the parent, or to the relation of the
 woman, to be kept for her use. This is fully explained by the
 regulation which follows. ‘*Dotem* puellae traditam pater exi-
 ‘gendi vel conservandi ipsi puellae habeat potestatem. *Quod si*
 ‘pater aut mater defuerint, tunc fratres vel proximi parentes,
 ‘dotem quam suscepient, ipsi conforori suae ad integrum restitu-
 ‘ant.’ *LL. Visigoth. lib. 3. tit. 1. l. 6. ap. Lindenbrog.*

I know that the custom of presenting *money* at marriages came to prevail among the German and Gothic nations, and among the Franks more particularly. In *Fredegarius*, for example, we read this description of the espousals of Clotildis. ‘*Legati offe- rentes solidum et denarium, ut mos est Francorum, eam partibus Clodovei sponsant.*’ *Gest. Franc. c. 18.* Let us not, however, be deceived. Here no purchase was made. The money presented was only the symbol of a contract. This is illustrated by the *Arra nuptialis* of the Visigoths. ‘*A die latae hujus legis decernimus, ut cum inter eos qui disponandi sunt, five inter eorum parentes, aut fortasse propinquos, pro filiorum nuptiis coram testibus praeceperit, definitio, et annulus arrarum* * *no-*
 ‘*mine*

* *Arras* or *arres* in France, *earnest* in England, and *arles* in Scotland, still express the money advanced in token that a bargain is concluded.

‘mine datus fuerit vel acceptus, quamvis scripturae non inter-
 ‘currant, nullatenus promissio violetur, cum qua datus est an-
 ‘nulus, et definitio facta coram testibus.’ *LL. Visigoth. lib. 3.*
tit. 1. l. 3.

But what refutes, in the most decisive manner, the notion that the wife was *purchased* with the money of the husband, is the following peculiarity. If a free man married his slave, and intended that his children by her should succeed to his fortune, it was necessary that he should make her a present of her liberty. And, what is remarkable, one of the methods of making her free, was the very act which is talked of as buying the property of the wife; it was the assigning her a *dower* or a morgengabe. ‘Si quis ancillam suam propriam matrimoniare volu-
 ‘erit sibi ad uxorem, sit ei licentia: Tamen debeat eam liberam
 ‘thingare, et sic facere liberam, quod est Widerboram, et
 ‘legitimam per garathinx, id est, per libertatis donationem; vel
 ‘per gratuitam donationem, id est *morgengabe*; tunc intelligatur
 ‘esse libera et legitima uxor, et filii qui ex ea nati fuerint legitimi
 ‘heredes efficiantur.’ *LL. Longobard. lib. 2. tit. 1. l. 8.* Among the Longobards the *dower* and the morgengabe came to be synonymous, and were fixed at the fourth part of the substance of the husband *. *LL. Longobard. lib. 2. tit. 4.*

I

* A very singular exception, to the doctrine I advance in this note, is to be found in the records of England, and I am surprised that it has escaped the learned in-

I might confirm these remarks by attending to the manners and customs of other nations. Among the inhabitants, for example, of Hindostan, while they were in a similar state of manners with the barbaric states, the ordinances and usages in matrimonial concerns, have a striking conformity with those I
have

stry of the writers whom I venture to oppose. I trust, notwithstanding, that my general conclusion is not to be affected by it. The case, however, is so odd, that I will give it to the reader in the words of my author.

‘ John Camois,’ says *Camden*, ‘ son of Lord Ralph Camois, (a precedent not to be paralleled in that or our own age), out of his own free will (I speak from the parliament rolls themselves, Parl. 30. Ed. I.) gave and demised his own wife, Margaret, daughter and heir of John de Gaidesden, to Sir William Painel, knight; and to the same [William] voluntarily gave, granted, released, and quitclaimed, all the goods and chattels which she had, or otherwise hereafter might have, and also whatever was in his hands, of the aforesaid Margaret’s goods and chattels, with their appurtenances. So as neither himself, nor any other in his name, might, nor for ever ought to claim or challenge any interest in the aforesaid Margaret, from henceforth, or in the goods or chattels of the said Margaret: Which is, what the antients said in one word, *ut omnia sua secum haberet*, that she should take away with her all that was her’s. By occasion of which grant, when she demanded her *dower* in the manour of Torpull, an estate of John Camois, her first husband, there commenced a memorable suit. But she was cast in it, and sentence passed, that she ought to have no dower from thence.’ *Britannia*, vol. 1. p. 205.

Even this example, however, of the sale of a wife, confirms the idea I inculcate as to the *dow* or dower.

have now described. This is evident from the code of Gentoo laws *.

‘ The woman’s property,’ say these laws, ‘ is whatever she receives during the *ayammi shadée*, the days of marriage.

‘ When a woman dies, then, whatever effects she acquired during the *ayammi shadée*, even though she hath a son living, shall first go to her unmarried daughter; if there is but one unmarried daughter, she shall obtain the whole; if there are several unmarried daughters, they all shall have equal shares.’

Here there is clearly the *dower* of the barbarians, and its definition on the decease of the wife, in a given or supposed situation. There is something more. For the woman, among the Hindoos, as well as among our barbarians, might acquire other property beside the dower, during the days of marriage. This is illustrated by the following regulations.

The woman’s property among the Hindoos is also ‘ whatever she may receive from any person, as she is going to her husband’s house, or coming from thence.

‘ Whatever

* Or Ordinations of the Pundits, from a Persian translation made from the original, written in the Shanfrit language. London, printed in the year 1776.

‘ Whatever her husband may at any time have given her;
‘ whatever she has received, at any time, from a brother; and
‘ whatever her father and mother may have given her.

‘ Whatever jewels or wearing apparel she may have received
‘ from any person.’

Here we have, obviously, the marriage-presents of the relations and friends, as among the barbarians; and, in the gifts of the husband, there is a counter part to the morgengabe of our forefathers, which is still farther explained by the following circumstance.

The form of marriage among the Hindoos, termed *ashore*, is described to be ‘ when a man gives money to a father and mother, on his marrying their daughter, and also gives something to the daughter herself.’

Here there is not only the *dos* or dower, to be kept by the relations for the use of the bride, but the morgengabe, or morning-present, in the disposal of the bride herself; peculiarities which constituted the general characteristics of these transactions among the barbarians.

This coincidence is probably to be found in all nations, in certain ages or periods of their history. It is an evidence of the uniformity

uniformity of the manners of man in the most distinct and distant regions ; and it marks strongly the importance of women in the early times of society and civilization. *Code of Gentoo Laws, ch. 2.*

It would be irksome to prosecute this subject at greater length. Law and history uniformly concur to inform us, that antiently, in Europe, the *dos* was the provision allotted to the wife, and not the price paid for her. The customs of other nations offer their testimony to the same purpose. And natural affection and reason, the generosity of manners in rude times, and the limited ideas of property which then prevail, all join to support the conclusion. Yielding to the united force of these particulars, I scruple not to contradict positions which have the sanction of distinguished names.

(5) In the process of time, regular forms or acts were invented for the constitution of the *dower*. Four methods of the dower prevailed more particularly over Europe, and, on that account, it is proper to recite and to explain them. These were the dower *ad opium ecclesiae*, the dower *ex affensu patris*, the dower by the *custom* of particular places, and the dower *de la plus belle*. And from these peculiarities, also, there results the most clear and decisive proof, that the *dos* was not the purchase-money of the wife, but the provision for her maintenance.

1. The dower *ad ostium ecclesiae* took place when the bridegroom, having come to the door of the church or monastery where he was to be married, and having plighted his faith to the woman, and received hers, made public mention of the quantity and proportion of the land he designed for her *dower*. In consequence of this transaction, she might take possession, on his death, of the provision thus allotted to her.

2. The dower *ex affensu patris* took place when the son endowed his wife, with consent of his father, in the lands to which he was to succeed. In this case, the wife, on the demise of the husband, was to enjoy the portion assigned to her in the estate of the father.

3. By the *custom* of some counties, cities, and boroughs, the woman had, for her *dower*, the half of her husband's possessions, or the whole.

4. The dower *de la plus belle* had place when a person, for example, being seised of forty acres of land, of which he held twenty by knight-service, and twenty in socage, took a wife; had a son, and dying, left him under age. The lord of whom the land was held in knight-service, took possession of the twenty acres, as guardian of the minor *in chivalry*; and the mother entered into the enjoyment of the other twenty, as guardian *in socage*. In this situation, the mother might bring a writ

writ of *dower* against the guardian in chivalry, to be endowed of the tenements holden in knight-service. But the guardian in chivalry, pleading in his defence, that she is guardian in socage, might require from the court that she be adjudged to endow herself in the *fairest of the tenements* she possesses. And, if she could not show that the property in socage was unequal to the purpose of the dower, the guardian in chivalry retained the lands holden of him during the minority of the heir. The woman, then assembling her neighbours, took possession, in their presence, of the *fairest part* of the socage lands, to hold them during her life, under the title of the *dower de la plus belle. Littleton, ch. 5. The Comments of Sir Edward Coke, and Mons. Houard, and the Glossaries.*

It is thus, that the simple regulation, mentioned by *Tacitus*, grew in time various and complicated. It even yet makes a figure in our laws. It is to be seen in the provisions they hold out for the widow. And, it may teach us to suspect, that enactments, which appear to be deeply founded in legislative wisdom, are often nothing more than improvements of the usages which natural reason and expediency have struck out in a barbarous age.

(6) The laws of the different nations of the barbarians vary in the dower or provision they ordained. The Longobardic laws made it the fourth part of the estate of the husband. *L.I.*

Longobard. *lib.* 2. *tit.* 4. *l.* 1. The Visigothic constitutions made it the tenth part of the substance of the husband. *LL. Visigoth.* *ap. Lindenbrog.* p. 53. And, in England, the legal dower consisted of the third part of the lands or teneements of the husband. *Coke on Littleton,* p. 31.

(7) ‘*Morgan* Germanice significat *mane* et *gab*, *donatio*, unde ‘dicitur *morgengab*, *donatio facta mane*.’ *Gloss. Lindenbrog.* p. 1441. ‘*De civitatibus vero quas Gailesuindam tam in dote, quam in morganegiba, hoc est, matutinali dono, in Franciam venientem certum est adquisivisse.*’ *Greg. Turon.* *lib.* 9. *c.* 20. See farther *LL. Burgund.* *tit.* 42. *l.* 2. *LL. Alamann.* *tit.* 56. *LL. Ripuar.* *tit.* 37. *l.* 2. *LL. Longobard.* *lib.* 1. *tit.* 9. *l.* 12. &c.

A learned and ingenious writer has observed, that, in England, there are no traces of the *morgengabe*. *Observations on the Statutes*, p. 9. 3d edit. This I suspect is a mistake. The *morgengabe* is mentioned in the laws of Canute, and in those of Henry I. *LL. Canut.* *par.* 2. *c.* 71. *LL. Hen.* 1. *c.* 70. *ap. Wilkins*, p. 144. 267. The pin-money of modern times, it is probable, grew out of this usage.

A peculiar kind of matrimonial engagement was called *matrimonium ad morganaticam*, which is to be distinguished from the one I now mention. This form of marriage did not permit
of

of *dower*, and the wife had only a *morgengabe* or present. It was intended for the benefit of men of rank, who had lost their wives, but had children. In consequence of it, they could legally connect themselves with low women, who, receiving and being entitled to no dower, could not burden their estates. The issue of such connections had no power of succession, and inherited no dignity. But provisions might be made for them. It was out of this source, chiefly, that the church of old was supplied. Men of influence could there deposit, most securely, the spawn of their concubinage. And it still is, and ever will be, wherever it is wealthy, an asylum for this produce, and for the younger sons of noble families.

This scheme of legal concubinage is prevalent, at this hour, in Germany ; and women, married after this odd fashion, are termed left-handed wives ; because it is a part of the ceremony for the bridegroom to give his left hand to the bride. Of such connections, as in antient times, the issue are bastards, as to inheritance, and bear neither the name nor the arms of the father.
Baron von Lowhen on Nobility.

Beside the *morgengabe*, or the present by the husband, it was common, at marriages, for the relations, and other persons connected with the parties, to express their satisfaction by making *gifts*. ‘*Gaudent muneribus*,’ is a part of the characteristic description of the antient Germans by *Tacitus*. ‘*Franci vero*,’ says *Gregory*

of Tours, when speaking of the marriage of the daughter of Chilperic, ‘ multa munera obtulerunt ; alii aurum, alii argentum, ‘ nonnulli equos, plerique vestimenta, et unusquisque ut potuit, ‘ donativum dedit.’ *Hist. lib. 6. c. 45.*

This custom pervaded all ranks of society. And the *money* or *penny* weddings which still prevail in small villages and hamlets are a remain of it. What, in one age, disgraces not the palace of the prince, is to be confined in another to the hovel of the rustic.

(8) The powers over a *morgengabe*, mentioned in the text, would not probably arise all at once, but gradually. The two former, I imagine, would be long known before the latter ; and extensive powers over a *morgengabe*, consisting of money, would sooner be exerted, than over one consisting of land. Of a *morgengabe* in land, there is the following disposition or *b* quest by Gertrude, a German lady of high rank, in the year 1273.

‘ Allodium situm in Griezenpach, ad se donationis titulo per-
 ‘ tinens, quod *morgengab* vulgariter nuncupatur, cultum et in-
 ‘ cultum, quae situm et inquisitum, cum omnibus attinentiis ec-
 ‘ clesiae S. Petri in monte liberaliter et absolute ordinat, testatur,
 ‘ tradit, et legat.’ *Boekmer de Secund. Nupt. illustr. Perf. c. 2.*
 § 41. *ap. Heinric. Elm. Jur. Germ. p. 121.*

The clergy, by besieging the beds of the dying, procured many legacies of this kind ; and their rapacity, though shocking and abominable, contributed to hasten the powers of the alienation of property.

(9) ‘ Habeat ipsa mulier morgengab, et *quod de parentibus ejus adduxerit*, id est, PHADERFIUM.’ *LL. Longobard. lib. 2. tit. 1. l. 4.* See also *LL. Alaman. tit. 56.* *LL. Wifgoth. lib. 3. tit. 1. l. 5.* *LL. Longobard. lib. 1. tit. 9. l. 12.*

In England, and in other countries, the term *Phaderfium*, which signifies *paternal estate*, was unknown ; but the term *maritagium* implied in them the prevalence of the custom. ‘ MARITAGIUM dicitur id quod viro datur cum uxore ; *dotem* enim appellamus Angli, non quod vir accipit, sed quod femina.’ *Spelm. Gloss. p. 405.* In the *Formulare Anglicanum*, there are preserved antient feoments of land to the husbands of the daughters and sisters of the grantors, in which *maritagium* is the term employed as expressive of the estate of the woman. See *Appendix No. 2.*

The following law of the Langobards, on the subject of the portion, or estate of the woman, seems to be very curious. ‘ Vidua quae in domo patris aut fratri regressa est, habeat sibi morganagab et meumum : De jaderio autem, id est, de alio dono, ‘ quan-

‘ quantum pater aut frater dederit ei, quando ad maritum
 ‘ ambulaverit, mittat IN CONFUSUM cum aliis fororibus.’ *LL.*
Longob. lib. 2. tit. 14. l. 15.

This commixtion of the portions of the women, is treated by *Litt'eton*, in his tenures, *lib. 3. ch. 2.* But nothing of the history, or the philosophy of the custom, appears there. A woman who had been married, and had received her *faderfum*, might, on the death of her ancestor, if the portions of her sisters were to prove higher, make a commixtion of the tenements, and lay claim to an equal share. If they were to prove less, she might retain her *faderfum*. This commixtion was called *Hotchkpot*, from a dish of that name. *Littleton, p. 167.* ‘ *Hotchkpot*,’ says *Cowel*, ‘ is a word that cometh out of the lowe countries, where *Hutspot* signifieth flesh cut into pretie pieces, and
 ‘ sodden with herbs and roots.’ *The Interpreter, Edit. 1607.* This dish is still in particular esteem in Scotland. *Littleton*, as cited above, makes *hotchkpot*, in its natural meaning, to signify a pudding composed of different ingredients.

The estate brought by the woman to the husband, when a full infeudation, was called *Maritagium liberum*; when otherwise, it was *maritagium servitio obnoxium*. *Glanvil, lib. 7. Regiam Majestatem, lib. 2. Braeton, lib. 2. Fleta, lib. 3. Littleton, lib. 1.*

(10) The *dos*, or *dower*, which had figured so much, was thus to be gradually swallowed up in the *jointure*; and, in this situation, it came to express the estate brought to the husband by the wife. This circumstance is well illustrated by the following example in *Muratori*, an. 1203.

‘Azo, Estensis Marchio, in publico conventu baronum Lombardiae, warrantavit et professus fuit, se accepisse in *dotem* a domina Aliz, filia quondam Rainaldi principis Antiocheni, quam in matrimonio sibi receperit, duo millia marcharum argenti, ac inde jure pignoris et donationis propter nuptias, investivisse dominam Aliz de tantis de suis bonis et possessionibus et immobilibus, ubicumque habeat, vel adquirere debeat, ut valeant duplex suprascriptae *dotis* et donationis.’ *Antiq. Eflens. tom. I. p. 381. ap. Heimac. Elem. Jur. Germ. p. 120.*

I pretend not to fix the precise time when *dos* assumed this sense. The meaning of words, varying perpetually with the fluctuation of manners and the intermixture of nations, gives an almost impenetrable darkness to the middle ages. The pale inquirer is often to forsake an interpretation he had chosen, and on which he had built. Language is to deceive him. He is to attend to customs and usages; yet customs and usages prevail for a time, are lost, and start up again. He is involved, and wanders in the double gloom of antiquity and barbarism.

(11) 'Dulcissi na filia mea illa, ego ille. Diurna sed impia
 'inter nos confuetudo tenetur, ut de terra paterna sorores cum
 'fratribus portionem non habeant. Sed ego perpendens hanc
 'inpietatem, sicut mihi a Deo aequaliter donati estis filii, ita
 'et a me fitis aequaliter diligendi, ut de rebus meis post meum
 'discessum aequaliter gaudeatis.' *Charta ap. Marculp. Form.*
lib. 2. c. 12.

'Inter Burgundiones id volumus custodiri, ut, si quis filium
 'non reliquerit, in loco filii filia in patris matrisque hereditate
 'succedat.' *LL. Burgund. tit. 14. l. 1.*

'Si quis Longobardus sine filiis legitimis masculinis mortuus
 'fuerit, et filiam dereliquerit unam aut plures legitimas, ipse
 'ei in omnem hereditatem patris vel matris suae, tanquam filii
 'legitimi masculini, heredes succedant.' *LL. Longob. lib 2. tit.*
14. l. 19. See farther, *LL. Saxon, tit. 7. LL. A. gl. et Werin.*
tit. 6. La Coutume Reformée du Fais et Duché de Normandie,
commentée par Bésnage, tome 1. p. 388. Selecta Fendalia Thomae-
fiana, p. 26—29.

(12) There are frequent examples of ladies exercising the civil rights and the jurisdictions of fiefs. Of courts held by them, and of decrees they pronounced, there are curious evidences in *Muratori, Antiq. Ital. Medii Ævi, vol. 1. p. 459. 614. 738.*
970. 971.

In a learned work, entitled, *le Droit public de France eclairci par les monumens de l'antiquité*, we meet the following notices, which are authenticated from records.

‘ Mathilde Comtesse d’Artois eut séance et voix délibérative
 ‘ comme les autres pairs de France, dans le procès criminel
 ‘ fait à Robert Comte de Flandres.

‘ Jeanne fille de Raymond Comte de Toulouse prêta le serment,
 ‘ et fit la foi et hommage au Roi de cette pairie.

‘ Jeanne fille de Baudouin fit serment de fidélité pour la pairie
 ‘ de Flandres. Marguerite sa soeur en hérita et assista comme pair
 ‘ au célèbre jugement des pairs de France, donné pour le Comté
 ‘ de Clermont en Beauvoisis.’ *Bouquet, p. 338.* See farther
Brussel, usage général des seifs, liv. 2. ch 14.

In England, in the reign of Edward III. there were summoned to parliament by writ *ad colloquium et tractatum* by their proxies, Mary Countess of Norfolk, Alienor Countess of Ormond, Anna Despenser, Philippa Countess of March, Johanna Fitzwater, Agneta Countess of Pembroke, and Catharine Countess of Athol. *Gurdon’s Hist. of the High Court of Parliament, vol. 1. p. 202. Parliam. Summons, 265.*

(13) The ornaments of the mother went early by succession to the daughters ; and, from the laws which prove this peculiarity, it is also to be inferred, that the passion of the women for dress was keen and strong.

‘ Ornamenta et vestimenta matronalia ad filias, absque ullo
 ‘ fratris fratrumque consortio, pertinebunt.’ *LL. Burgund. tit.*
51. l. 3.

‘ Mater moriens filio terram, mancipia, pecuniam dimittat ;
 ‘ filiae vero spolia colli, id est, murenas, nuscas, monilia, inau-
 ‘ res, vestes, armillas, vel quidquid ornamenti proprii videbatur
 ‘ habuisse.’ *LL. Angl. et Werin. tit. 6. l. 6.*

(14) ‘ Si quis propter libidinem liberae manum injecerit, aut
 virginis seu uxori alterius, quod Bajuvarii horgrift vocant, cum
 vi. solid. componat.’ *LL. Baiuvar. tit. 7. l. 3.*

‘ Si indumenta super genucula elevaverit quod humilzorun
 ‘ vocant, cum xii. solid. componat.’ *Ibid. l. 4.*

‘ Si autem discriminalia ejecerit de capite, Wultworf dicunt,
 ‘ vel virginis libidinose crines de capite extraxerit, cum xii. sol.
 ‘ componat.’ *Ibid. l. 5.*

‘Si qua libera faemina virgo vadit in itinere suo inter duas villas, et obviavit eam aliquis, et per raptum *denudat* caput ejus, cum vi. sol. componat. Et si ejus vestimenta levaverit, ut usque ad *genicula* denudet, cum vi. sol. componat: Et si eam deaudaverit ut *genitalia* ejus appareant, vel *posteriora*, cum xii. sol. componat.’ *LL. Alam. tit. 58. l. 1.*

‘Si quis liberam foeminam per *verenda* ejus comprehendenter it iii. solid. componat, et duos solidos pro fredo.’ *LL. Frison. tit. 22. l. 89.* See farther *LL. Sal. tit. 22. LL. Longobard. lib. 2. tit. 55. l. 16.*

One must smile at the simplicity of these regulations. They are proofs, notwithstanding, of the respect entertained for chastity. They express, immodestly, the delicacies of a rude, but refining people. They offend virtue, in the very act of promoting it.

Similar institutions or regulations, may be seen in the code of Gentoo laws; but, as they are expressed with a still greater freedom of language, I avoid to give any examples of them. *Ch. 19.*

S E C T I O N III.

(1) 'PRINCIPES regionum atque pagorum inter suos jus dicunt, controversiasque minuunt.' *Caesar, de Bell. Gall. lib. 6. c. 22.* See also *Tacit. de Mor. Germ. c. 12.*

These *principes* became lords or barons, after the conquests of the barbarians, and, in this last state, continued and improved the privileges they had previously possessed. *Dissert. concerning the Antiquity of the English Constitution, Part. 3.* In Germany, there was probably no appeal from their decisions. For, in the German communities, it is said, there was no common magistrate. 'Nullus communis est magistratus.' *Caesar, ibid.* The judging, without appeal, was exercised in all the Gothic kingdoms by the higher division of the nobility. They had the *high* and the *low* justice, the *justice haut et bas, alté et basé*.

It would lead to details improper in this place, if I should attempt to explain the origin and growth of the different privileges

leges of the nobles. But I may hint my surprise, that these topics, so full of curiosity, have so little attracted our antiquaries and lawyers. The jurisdiction and powers exercised by the great, form a remarkable step in the progress of the European governments. Loyseau, indeed, and many French writers, make an easy discussion of this matter, by affecting to treat them as encroachments on monarchy, or on the rights of kings. And Dr Robertson has given his sanction to this opinion. *Hist. of Charles V.* vol. I. p. 60.

A perfection, however, of government, or of regal jurisdiction, is thus supposed, in the moment of its rise; a circumstance, contradictory alike to natural reason and to story. Government is not perfect all at once: It attains not maturity but by slow degrees. The privileges of the nobles were prior to its perfect state. In fact, it was by the abolition of these that it grew to strength and ripeness. The monarchies of Europe were completed, when the high privileges of the nobility were destroyed. But these privileges were exercised before government was understood, and before kings had ascertained their prerogatives.

(2) An old writer, speaking of the greater barons or lords, has these words. 'In omnibus tenementis suis omnem *ab anti-*
' *quo legalem habuere justitiam, videlicet, ferrum, foſſam, furcas,*
' *et similia.*' *Gervasius Dorobern.* an. 1195. ap. *Du Cange, voc. Foſſa.*

‘ Proditores

‘*Proditores et transfugas*,’ says *Tacitus* of the old Germans, ‘*arbribus suspendunt. Ignavos et imbelles, et corpore infames coeno ac palude, injecta insuper crate, mergunt.*’ *De Mor. Germ.* c. 12. This description has, doubtless, a reference to the German nobles or chiefs who presided in the courts of the cantons and districts into which a tribe or community was divided. And, does it not call to one’s mind the *pit* and *gallows*, or the right to determine *de alto ei basso* of the feudal nobility?

The power of mercy, or the pardoning of a criminal after sentence has been pronounced against him, is a curious circumstance in criminal jurisdiction. I should think, that it was exerted by the lord or baron in his dominions before it could be exercised in a general manner by the sovereign. The connection between the lord and the vassal was intimate; and the felony of the latter being chiefly an injury to the former, it might naturally enough be imagined, that he was entitled not only to forgive the offence, but to suspend the punishment. To his proper vassals, the sovereign might also act in the same way. It was thus, in fact, in the Anglo-Saxon period of our history. For the king had then only the power of pardoning crimes as to himself. But, on what principle did the sovereign begin to exert the general prerogative of pardoning criminals, every where through the state, after condemnation? The question is important, and might be argued with great show, and much ingenuity. But the narrow boundaries within which I must confine

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my remarks, admit not of either. I can only hint at my idea, and must not wait to insist upon it.

When the territorial jurisdictions of the nobles were to decay, they lost the privilege of giving pardons, as well as the other advantages annexed to their fiefs. The judges who succeeded them, were not to possess their prerogatives. Other, and more cultivated maxims of law and equity, had grown familiar. Unconnected with the distributions and the offices of justice, but as peers, the nobles were to cease to interfere with law and business in their estates or territories. In this condition, their prerogatives could pass no where but to the crown. That of *mercy* was to be swallowed up with the rest. When regular courts were erected, and when the barons neither levied troops, coined money, nor pardoned crimes, all these privileges were to be exercised, exclusively, by the sovereign. All the members of the community were then under one head. The kingdom seemed as it were to be one great fief, and the people looked up to the sovereign as the only superior.

The act of parliament which had the effect to abridge, for ever, the high prerogatives of the nobles, declares, ‘ That no person ‘ or persons, of what estate or degree soever they be, from the ‘ first day of July, which shall be in the year of our Lord God ‘ 1536, shall have any power or authority to pardon or remit ‘ any treasons, murthers, manslaughters, or any kind of felonies,

‘ whatsoever they be; nor any accessaries to any treasons, murders, manslaughters, or felonies; or any outlawries, for any such offences committed, perpetrated, done, or divulged, or hereafter to be committed, done, or divulged, by, or against any person or persons, in any part of this realm, Wales, or to the marches of the same; but that the King’s Highness, his heirs and successors, Kings of this realm, shall have *the whole power and authority thereof*, united and knit to the imperial crown of this realm.’ *Stat. 27. Henry VIII. c. 24.*

(3) Du Cange, *Dissert. 29. sur l’Histoire de St. Louis.* Brussel, usage general des fiefs, liv. 2.

(4) ‘ Suscipere tam inimicitias seu patris seu propinqui, quam amicitias, necesse est.’ *Tacit. de Mor. Germ. c. 21.*

Hence the *deadly feuds* of our ancestors. Such is the state of manners in all rude ages. The American carries his friendships and his resentments to extremity, and delivers them as an inheritance to his sons. He is the best friend, and the bitterest enemy. When he is disposed to be hostile, he knows how to conceal his sentiments: ‘ He can even affect to be reconciled till he catches the opportunity of revenge. No distance of place, and no length of time can allay his resentment, or protect the object of it.’ *Europ. Settlem. in Amer. vol. 1. p. 165.*

It was in consequence of the principle or right of revenge, that the Greeks made it a maxim of their creed, that the gods punish the crimes of the wicked upon their innocent posterity. It was a consequence of it, that, even in modern times, those in- clement and ungenerous laws were enacted, which taint the blood of a rebel, which dare to violate the sacred rights of hu- manity, and to punish a blameless progeny with penalties and forfeitures.

(5) ' In Gallia, non solum in omnibus civitatibus, atque pagis
 ' partibusque, sed pene etiam in singulis domibus, *factiones* sunt;
 ' earumque factionum sunt *principes*, qui summae auctoritatem
 ' eorum judicio habere existimantur; quorum ad arbitrium ju-
 ' diciumque summa omnium rerum consiliorumque redeat.'

Caesar, de Bell. Gall. lib. 6. c. 10.

After the Germanic conquests, the words *faida*, *feid*, *feeth*, and *feud*, came to express the hostilities of the combination of kindred, who revenged the death of any person of their blood, against the killer and his race. In the Anglo-Saxon period of our history, these factions and hostilities were prevalent to an uncommon degree. And, what is worthy of observation, when a person was outlawed, and could form no combination of this sort for his protection, but might be put to death by any individual who met him, the term *frendles-man*, expressed his condition. ' Talem,' says *Braccon*, ' vocant Angli *Utlaughe*, et a-

‘ Ilio nomine *antiquitus* solet nominari, scilicet FRIENDLESS-
‘ MAN.’ *Lib. 3. p. 129.*

About the year 944, King Edmund, with a view of repressing the violence and pernicious tendency of such confederacies, enacted the following method for their regulation.

‘ Memet, et nos omnes taedet impiarum et quotidianarum
‘ pugnarum quae inter nos ipsos fiunt, et propterea in hunc mo-
‘ dum statuimus. Si quis alium posthac interficerit, solus cum
‘ interfecti cognatis faidam gerito, eujuscunque conditionis fue-
‘ rit, ni ope amicorum integrum weram intra 12 menses perfol-
‘ verit. Sin destituerint eum cognati et noluerint: Volumus ut
‘ illi omnes [praeter reum] à faida sint liberi, dum tamen, nec
‘ vietum ei prebeant, nec refugium. Quod si quis hoc fecerit
‘ suis omnibus apud regem mulctator, et cum eo quem desti-
‘ tuit nuper, faidam jam sustineat propinquorum interfecti. Qui
‘ vero ab alio cognatorum quain a reo sumpserit vindictam, sit
‘ in faida ipsius regis et amicorum suorum omnium, omnibus-
‘ que bonis suis plebitor.’ *LL. Edmund. ap. Spelm. Gloss. p.*
209.

The method of compounding, or of buying away the resentment of the injured kindred, is thus described by the same prince.

‘ Prudentium

‘ Prudentium est faidas compescere. Primo [de more gentium] oratorem mittet interfector ad cognatos interfecti, nuntiatum se velle eisdem satisfacere. Deinde tradatur interfector in manus oratoris, ut coram veniat pacatum, et de solvenda were ipsemet spondeat. Sponsam solvi satisfacto. Hoc facto, indicitetur mundium regis, ab illo die usque in 21 noctes, et collistrigii multam dependito; post alias 21 noctes manbotam, et nocte 21 sequenti primam were solutionem numerato.’
LL. Edmund. ap. Spelm. Glouc. p. 210. et Wilkins, p. 74. 75.

Transactions of the same nature, characterise the criminal jurisprudence of all infant nations. ‘ Criminal matters,’ says a most acute and elegant writer, ‘ are generally compromised among the Americans in the following manner. The offender absents himself; his friends send a compliment of condolence to those of the party murdered. Presents are offered, which are rarely refused. The head of the family appears, who, in a formal speech, delivers the presents, which consist often of above sixty articles, every one of which is given to cancel some part of the offence, and to assuage the grief of the suffering party. With the first he says, *By this I remove the hatchet from the wound, and make it to fall out of the hands of him who is prepared to revenge the injury*; with the second, *I dry up the blood of that wound*; and so on, in apt figures, taking away, one by one, all the ill consequences of the murder.’
Europ. Settlem. in America, vol. 1. p. 174.

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The hostilities and factions of which I speak, were supported among the Anglo-Saxons, as among the Gauls and the Germans, by the authority and countenance of the chiefs and the nobles. In the Norman times, the barons gave letters or mandates of protection to individuals, whom they were disposed to serve. Even kings gave obligations to abbeys and monasteries, by which they were bound to protect them against violence of every kind. On the consideration of fines, they were even to remit their own animosities, and to protect criminals from justice. See *Appendix*, No 3. The same things had place in the other kingdoms of Europe. Men, weak, and without strength, bought the assistance and protection of the strong and powerful. *Du Cange*, *voc. Salvamentum, Capitalicium. Form. Solen. ap. Baluz.*

(6) After the beautiful discovery of a magistrate, the violence of the injured is corrected; and it is then, probably, that fines and compensations for offences are invented, or at least established. 'Nec implacabiles durant,' says *Tacitus*, of the resentments of the Germans, 'luitur enim etiam homicidium certo armentorum ac pecorum numero, recipitque satisfactionem universa domus.' *De Mor. Germ. c. 31.*

These fines or compositions, of which it was the object to satisfy the revenge of the relations of the person who had suffered, were originally settled by their agreement with the offender, or,

or, by the discretion of the magistrate. Afterwards they were fixed by ordinances. The Anglo-Saxon laws, as well as those of the other barbarians, recount not only the stated fines for particular offences, but for particular persons, from the prince to the peasant. When the delinquent could not pay the fine, which was to buy away, or to gratify the resentment of the injured family, the law, before it was improved, delivered him over to their resentment, and the wild state of nature revived again. Compositions of this kind were known, antiently, in Europe, under a variety of names. See in the Glossaries, *Wera*, *Faida*, *Compositio*, *Wergeldum*, &c.

The exaction of fines to the injured, among the antient Germans, I consider as a proof that, in criminal matters, they had proceeded to appeal to a judge. I therefore differ from Dr Robertson, when he observes, that, 'among the antient Germans, as well as other nations in a similar state of society, the right of avenging injuries was a private and personal right, exercised by force of arms, without any reference to an umpire, or any appeal to a magistrate for decision.' *Hist. of Charles V.* vol. 1. p. 274.

In fact, it was not even solely the fine to individuals that was known among the Germans. They had advanced much farther in criminal jurisprudence. It was thought that the criminal, beside offending a particular family by the injury done to any

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of its number, had also offended the society, by breaking its peace. A fine, likewise, was, on this account, exacted from him, and went to the public or fisc. And thus Mr Hume, too, is mistaken, when he will not allow that the Germans had made this step towards a more cultivated life. *Hist. of England*, vol. 1. p. 154.

These different fines, the composition to the individuals, and that to the public, are pointedly and beautifully distinguished in the following passage of *Tacitus*. Having mentioned the methods in which the German nations punished the greater crimes, he adds, ‘Levioribus delictis, pro modo poenarum, equorum ‘pecorumque numero convicti mulctantur. Pars mulctae Regi ‘vel Civitati: Pars ipsi qui vindicatur, vel propinquis ejus, ex-‘solvitur.’ *De Mor. Germ.* c. 12. It is impossible for an authority to be more express or satisfactory against these eminent writers.

After the conquests of the Germans, the fine for disturbing the public peace was exacted under the name of *fredum*; and, it is observable, that a portion of the profits of it came to constitute the first salary of judges.

The biographer of Charles V. I am sensible, professing to be guided by Baron Montesquieu, denies that ‘the *fredum* was a compensation due to the community, on account of the public peace;’ and considers it as ‘the price paid to the magistrate

‘for

‘ for the protection he afforded against the violence of resentment.’ *Vol. 1. p. 300.* This notion seems not to agree with his former opinion, as he conceives that the *fredum* was paid in the age of *Tacitus**. And I observe he has also affirmed, that the fine to the injured family may, in like manner, be traced back to the antient Germans †, which appears to be another inconsistency with his former declaration. But, waving any consideration of these inadvertencies, I think there is nothing more evident, than that the *fredum* was originally paid to the fisc, or to the sovereign, for the breach of the peace. The following arguments are stubborn, and perhaps conclusive.

‘ *Fredum regalis compositio Pacis.*’ *Gloss. Vet. ap. Lindenbrog.*
p. 1404.

‘ *Hoc quoque jubemus, ut judices supra nominati, sive fiscales, de quacunque libet causa freda non exigant, priusquam factinus componatur.* Si quis autem per cupiditatem ista transgressus fuerit, legibus componatur. *Fredum autem non illi judic*

K k

‘ dici

* ‘ A certain sum, called a *fredum*, was paid to the king or state, as *Tacitus* expresses it, or the *Fiscus*, in the language of the barbarous laws.’ *vol. 1. p. 300.*

† ‘ The payment of a fine, by way of satisfaction to the person or family injured, was the first device of a rude people, in order to check the career of private resentment, and to extinguish those *jaidae* or deadly feuds, which were prosecuted among them, with the utmost violence. This custom may be traced back to the antient Germans.’ *vol. 1. p. 299*

‘ dici tribuat, cui culpam commisit, sed illi qui solutionem recipit,
 ‘ *tertiam partem* Fisco tribuat, ut PAX perpetua stabilis perma-
 ‘ neat.’ *LL. Ripuar. tit. 89.*

‘ Si quis liber liberum infra januas ecclesiae occiderit, cognoscatur
 ‘ se contra Deum injuste fecisse, et ecclesiam Dei polluisse : Ad ip-
 ‘ sam ecclesiam quam polluit lx. sol. componat. Ad Fisco vero
 ‘ similiter alios lx. sol. pro FREDO solvat : Parentibus autem legi-
 ‘ tum weregildum solvat.’ *LL. Alaman. tit. 4.*

‘ Si nobilis furtum quodlibet dicitur perpetrasse, et negare vo-
 ‘ luerit, cum quinque sacramentalibus juret : Aut si negare non
 ‘ potuerit, quod abstulit in duplum restituat, et ad partem REGIS
 ‘ lxxx. sol. pro FREDO componat, hoc est Weregildum suum.’
LL. Frisionum, tit. 3. l. 1. See farther *LL. Longobard. tit. 30,*
l. 13. Capit. Kar. et Lud. hb. 3. tit. 30.

Among the Anglo-Saxons, the fine for the violated peace was termed *Griethbrech. Spelm. Gloss.* It was, as times became mercenary, that a part of the *fredum*, and sometimes the whole of it, went to the judge. And the salary thus assigned to him, was not for the protection he afforded, for he was the servant of the public; but as the reward of his growing trouble, and the emolument of his office. See *LL. Sal. tit. 52. l. 3. tit. 55. l. 2.*
LL. Baiwvar. tit. 2. l. 16.

The giving a stipend to judges out of the fines for the violated peace, was common in England, as well as in the other states of Europe. This stipend or allowance was usually the *third penny* of the county. An old book of Battel-Abbey, cited by Mr Selden, has these words. ‘Confuetudinaliter per totam Angliam mos ‘antiquitus pro lege inoleverat, *comites* provinciarum TERTIUM DENARIUM sibi obtinere.’ *Tit. Hon. part 2. ch. 5. sect. 7.* Gervase of Tilbury, or whoever wrote the old dialogue concerning the exchequer, speaks thus. ‘*Comes* est ‘qui TERTIAM PORTIONEM corum quae de placitis proveni- ‘unt in quolibet comitatu percipit.’ And the *Earl*, he says, was called *Comes*, ‘quia *Fisco* socius est, et comes in percipiendis.’ *Dial. de Scaccar. lib. 1. c. 17.* This tract is published by Mr Madox in his history of the exchequer. ‘De ipsis octo libris,’ say the laws of the Confessor, ‘[sic. multa violatae pacis] Rex ‘habebat centum solidos, et *Consul* comitatus quinquaginta, qui ‘TERTIUM habebat DENARIUM de forisfacturis: Decanus ‘autem reliquos decem.’ *LL. Confess. c. 31. ap. Spelm. Gloss. p. 142.* What shows likewise, beyond a doubt, that the third penny of the county arose out of the fines for the violated peace, is the circumstance, that the *Kings* of England made formal grants of it to subjects whom they favoured. This, the book already quoted concerning the exchequer, lays down in these words. ‘Hii (it had been speaking of Earls, and of the profits of fines,) ‘tantum ista percipiunt, quibus *regum* munificentia obsequii ‘praetiti, vel eximiae probitatis intuitu *comites* sibi creat, et

‘ratione dignitatis illius haec conferenda decernit, quibusdam *haec-reditarie* quibusdam *personaliter.*’ *Dial. de Scaccar. ap. Madox*, p. 402. The higher Earls, or the Earls palatine, it is observable, had all the profits to their own use. Of the Earls who possessed the *third penny*, there is mentioned the Earl of Kent, who had it under William I. And there is evidence, that it was antiently enjoyed by the Earls of Arundel, Oxford, Essex, Norfolk, and Devonshire. *Selden, Tit. Hon. part 2. ch. 5. Madox, Baron. Anglica, book 2. ch. 1.*

(7) When the right of private war was acknowledged as a legal prerogative of nobility, regulations were made to adjust its nature and exertion. *Beaumanoir, Coutumes des Beauvoisis, ch. 59. Du Cange, dissert. 29. sur l'histoire de St. Louis. Boulainvilliers on the antient parliaments of France, letter. 5.* What is surprising, even the neglect of exercising this right, when a proper occasion required its exertion, was an offence to the order who professed it, and an object of punishment. ‘La Duc *San-dragèsile*,’ says *Saint Foix*, ‘ayant été tué par quelqu'un de ses ennemis, les Grands du Royaume citerent ses enfans qui negligoient de venger sa mort, et les priverent de sa succession.’ *Essais histol. tom. 2. p. 88.* In France, this prerogative of the nobles was not entirely abolished in the middle of the fourteenth century. *Brussel, usage general des Fiefs, liv. 2. ch. 2.*

Dr Robertson seems to imagine, that, in England after the Norman invasion, the nobility lost, or did not exercise the right of private war ; and he reasons with a view to account for these particulars. *Hist. of Charles V.* vol. i. * It is to be acknowledged, that the historians of England have not been sufficiently attentive

* ‘ After the conquest, the mention of private wars among the nobility, occurs more rarely in the English history, than in that of any other European nation, and no laws concerning them are to be found in the body of their statutes. Such a change in their own manners, and such a variation from those of their neighbours, is remarkable. Is it to be ascribed to the extraordinary power which William the Norman acquired by right of conquest, and transmitted to his successors, which rendered the execution of justice more vigorous and decisive, and the jurisdiction of the King's court more extensive, than under the monarchs on the continent ? Or, was it owing to the settlement of the Normans in England, who, having never adopted the practice of private war in their own country, abolished it in the kingdom which they conquered ? It is asserted, in an ordinance of John King of France, that in all times past, persons of every rank in Normandy have been prohibited to wage war, and the practice has been deemed unlawful. *Ordon.* tom. 2. p. 407. If this fact were certain, it would go far towards explaining the peculiarity which I have mentioned. But, as there are some English acts of parliament, which, according to the remark of the learned author of the *Observations on the Statutes, chiefly the more ancient*, recite falsehoods, it may be added, that this is not peculiar to the laws of that country. Notwithstanding the positive assertion in this public law of France, there is good reason for considering it as a statute which recites a falsehood.’ *Charles V.* vol. i. p. 286. 287.

The first question that is put by this historian, is founded on a mistake ; for William the Norman achieved no *conquest* over England. The second question is founded on a supposed fact, which he appears to regard as of no moment ; and indeed it does not deserve to be considered in any other light.

attentive to record the private wars of the nobles. But this elegant writer ought, doubtless, to have remembered, that, in the higher order of its nobility, the right of private war was as much inherent as the coinage of money, the holding of courts, or any other of their prerogatives; and that these received not their last and effectual blow till the age and reign of Henry VIII.

In the appendix, I produce a very curious proof of the exercise of private war in England. It is a truce between two nobles, agreeing to stop hostilities. *Appendix, No. 4.* The following passage of *Glanville*, is also a striking testimony of the existence of the right of private war. ‘Utrum vero ad *guerram* ‘*suam* maintenendam possint domini hujusmodi auxilia exigere ‘quaero.’ *lib. 9. c. 8.* And the dispute between Richard, Earl Marshal, and Henry III. of which there is a singular relation in Matthew Paris, is certainly to be accounted for on the principle of this prerogative.

Nor is there wanting other evidence of its existence. It was in a great measure, from the exercise of the right of private war, that in England, in the age of Stephen, there were above eleven hundred forts and castles. *Lord Lyttelton’s History of Henry II.* *vol. 1. p. 418.* The *feudum jurabile et reddibile* was likewise a consequence of it, by which a sovereign or a noble put a vassal into any of his castles, in order to defend it, and to guard his stores and his prisoners, and whom he bound by an oath, to re-

florc

flourished in a certain time, or to his call or mandate. This form of fief and tenure was not only known in England, but frequent there; and mention is made of it in the laws of Henry I. The right of private war was, therefore, often exercised in this country; and, what deserves observation, without paying an attention to this right, it is impossible to explain those ordinances of Henry which allude to this feudal peculiarity. Spelman, not attending to it, could not reach their meaning, and pronounces of them, that they are obscure and corrupted. *Gloss. voc. Castellacium.* Their sense, notwithstanding, when tried by this standard, is easy and natural.

(8) The prerogatives of the higher nobility throughout Europe, may be referred to the following heads; the power of making war of their private authority, the right of life and death in their territories, the levying of imposts, the raising of troops, the coining of money, and the making of laws. It is to be wished, that some inquisitive and judicious antiquary would collect from the English laws and records, all the circumstances to be found which have a relation to these topics. He could not offer a more valuable present to the public.

These powers were exercised by the higher nobles among the Anglo-Saxons. For, though *palatinates*, which are generally allowed to have possessed them, were not familiar by name in those times; yet, I cannot but agree with Mr Selden, that the

sense and substance of them were then fully known. The Anglo-Saxon earls, who had their earldoms to their own use, had regal jurisdiction, and the king's writ of ordinary justice did not run in their dominions. Such, for example, was Etheldred Earl of Mercia, under King Alfred, and his son King Edward. *Selden, Tit. Hon. part. 2. ch. 5. sect. 8. Differt. concerning the Antiq. of the Engl. Constitution, part 3.*

After the Norman invasion, many of the higher nobility were expressly known as *Earls-Palatine*. Cheshire was a palatinate, and possessed by its earls, *ad gladium, sicut ipse rex totam tenebat Angliam ad coronam suam*. The antient Earls of Pembroke were also palatines, being *domini totius comitatus de Pembroch*, and holding *totum regale infra praecinctum comitatus sui de Pembroch*. This is the language of records. The like regality was claimed in the barony of Haverford. The bishops of Durham had, antiently, *omnia jura regalia, et omnes libertates regales infra libertatem suam Dunelmensem*. The archbishop of York had a regality in Hexham, which, antiently, was styled a *county-palatine*. The bishoprick of Ely was a palatinate, or a royal franchise. The earldom of Lancaster was created *palatine* in the reign of Edward III. Hugo de Beaufort Earl of Shrewsbury, under William II. had the title *palatine*. The same thing is mentioned of John Earl of Warren and Surrey, under Edward III. And Humphrey de Bohun, Earl of Hereford and Essex, had a *regality* within the honour of Brecknock. *Speelman Gloss.*

de Comite Palatino, Selden, tit. *Hon. part. 2. ch. 5. sect 8. Madox*, *Bar. Angl. p. 150. Camden, Britan. p. 661. 935.*

(9) *Marculphus* has preserved a form or writing by which the conversion of allodiality into tenure took place. The inquisitive reader may consult it in *Boluz. Capit. Reg. Franc. tom. 2. p. 382. 383.* with the notes of *Hieron. Bignon. p. 896. 898.*

The agreement of an allodial proprietor and the sovereign, or the feudal lord to whom he was disposed to grant his property, with the view of submitting it to tenure, directed the nature and peculiarity of the obligations to which he was to yield in his new situation. In consequence of the protection of a superior, he was generally to give his military service, and all the aids or incidents of fiefs. At other times, however, he was only bound not to take arms against the superior, but to remain at peace, without any connection with the enemies of his lord, and without the burden of the feudal incidents. He was simply to be bound to homage, and a passive fidelity.

It is contended for, indeed, strenuously, and at great length, by Monsr. Bouquet, that the greater and lesser jurisdictions were inherent in allodiality. *Le droit Public de France.* Dr Smith, in his most ingenious Inquiries concerning the Wealth of Nations, gives his suffrage for the same opinion. And Dr Robertson,

bertson, notwithstanding what he has said concerning fiefs, is, in some measure, disposed to it. *Hist. of Charles V.* vol. 1. p. 303.

If supreme jurisdiction, however, and eminent prerogatives were connected with allodiality, it seems altogether inconceivable, why its possessors should have converted it into fiefs. Perhaps these writers have confounded with allodiality the *feudum Francum*, or *honoratum*, which expressed a condition of it after its conversion into feudalism. ‘Ut omnia teneant,’ says an old monument cited in Du Cange, ‘ab Abbatie et successoribus in ‘francum feudum sive allodium, ut pro his homagium francum ‘nobis Abbatii et successoribus nostris, amplius facere teneantur.’ ‘Haec omnia,’ says another charter cited by him, ‘habeo et ‘teneo a te D. Raymundo Comite Melgorii ad *feudum francum* ‘et *honoratum*, pro quibus omnibus prescriptis facio vobis hominiū et fidelitatem.’ *Du Cange, voc. Feudum francum et honoratum.* ‘Les fiefs d’*honneur*,’ says *Salvaing*, ‘sont ceux qui ‘ont tellement conservé la nature de leur origine, qu’ils ne ‘doivent au seigneur que la *bonche* et les *maines*, sans aucune ‘charge de *quint*, de *rachat*, ni d’autre profit quelconque.’ *ch. 3.*

It is also well known, and might be illustrated by a variety of proofs, that allodial proprietors were so little attended to, and adorned with distinctions, that they could not, without the consent of the king, build, for their protection, a house of strength or a castle. *Brussel, usage-general des fiefs*, vol. 1. p. 368. Yet
this

this privilege was originally of so little account, that it was enjoyed indifferently by every feudal lord.

(10) Du Cange, voc. Gruarium, Pedagium, Rotaticum, Feudum Nummorum, Feudum Soldatae. Brüssel, Usage-general des fiefs, liv. 1. ch. 1. sect. 11. Assises de Jérusalem, avec des notes, par Thaumassiere, p. 171. 268.

S E C T I O N IV.

(1) **D**UCES ex virtute sumunt. . . . Duces exemplo
 ‘potius quam imperio, si prompti, si conspicui:
 ‘Si ante aciem agant, admiratione praesunt.’ *Tacit. de Mor. Germ. c. 7.* ‘Ubi quis ex principibus in concilio se dixit ducem
 ‘fore, ut qui sequi velint profiteantur; consurgunt ii qui et cau-
 ‘sam et hominem probant, suumque auxilium pollicentur, atque
 ‘ab multitudine collaudantur.’ *Caesar, de Bell. Gall. lib. 6.*
c. 22.

(2) ‘Nihil autem neque publicae neque privatae rei, nisi ar-
 ‘mati agunt. Sed arma sumere non ante cuiquam moris, quam
 ‘civitas suffectorum probaverit. Tum in ipso consilio vel prin-
 ‘cipum aliquis, vel pater, vel propinquus tecto fratreaque juve-
 ‘nem ornant.’ *Tacit. de Mor. Germ. c. 13.*

‘These military youths,’ says *Camden*, ‘were called in their
 ‘language *Knechts*, as they are in ours.’ *Introd. to the Britannia,*
p. 245.

(3)

(3) 'Patri Regi Rex Ludovicus Ingelheim occurrit, indeque Renesburg cum eo abiit, ibique *ense* jam appetens adolescentiae tempora, *accinctus est.*' *Vit. Lud. Pii*, an. 791. Of King Athelstane there is this mention in *Malmsbury*, 'Nam et avus Alfredus prosperum ei regnum imprecatus fuerat, videns et gratiose complexus speciei spectatae puerum, et gestuum elegantium: Quem etiam premature militem fecerat donatum chlamyde coccinea, gemmato baltheo, *ense* Saxonico, cum vagina aurea.' *Lib. 2.* 'Henrico nepoti suo David Rex Scotorum virilia tradidit arma.' *Hen. Huntingdon*, *lib. 8.* See *Du Cange*, *voc. Arma.*

Other particulars, expressive of the antiquity of knighthood, may be seen in the Dissertations on the history of St. Louis. And, with regard to our Saxon ancestors in particular, *Mr Selden* has found frequent mention of knights in the charters of that age. *Titles of honour*, *part 2. ch. 5.* *Mr Hume*, therefore, reasons hypothetically, when he admits not of chivalry in the Anglo-Saxon times. *Appendix, 11.*

The addition *Sir* to the names of knights, was in use before the age of Edward I. and is from *Sire*, which in old French signifies *seigneur*, or lord. Though applicable to all knights, it served properly to distinguish those of the order who were not barons. To knights-baronet, who are a modern institution, and no part of the antient chivalry, the addition *Sir* is granted

granted by a clause in their patents of creation. *Ashmole on the Garter*, ch. 1.

The most honourable method of receiving knighthood was from the sovereign. But every possessor of a fief could bestow it; and one knight could create another. ‘Eorum,’ says *Spelman*, ‘fuit militem facere quorum fuit feodum dare.’ *Dissert. de milite, ap. Reliq. p. 180.* ‘Tout chevalier,’ says *St. Palaye*, ‘a-voit le droit de faire chevaliers.’ *Memoires sur l’ancienne chevalerie, tom. 1. p. 70.* A king could receive it from the hands of a private gentleman.

Its value may be remarked in the following peculiarity. ‘Sci-
‘tis,’ said a Lombard king to his courtiers, ‘non esse apud nos
‘consuetudinem, ut regis filius cum patre prandeat, nisi prius a
‘rege gentis exteræ arma fuisse perit.’ *Paul. Diac. lib. 1. ap. Honore de Sainte Marie, cijet. sur la chevalerie, p. 182.* ‘Libe-
‘ros suos,’ said *Caesar* of the Gauls, ‘nisi quum adoleverint, ut
‘munus militiae sustinere possint, palam ad se adire non patiun-
‘tur; filiumque in puerili aetate in publico *in conpeclu patris*
‘affilere, turpe ducunt.’ *De Bell. Gall. lib. 6. c. 18.*

‘Dans les premiers temps,’ says *St. Palaye*, ‘la plus illustre
‘naissance ne donnoit aux nobles aucun rang personnel, a moins
‘qu’ils n’y eussent ajouité le titre ou le grade de chevalier.
‘Jusqu’alors on ne les consideroit point comme *membres de*
‘*l’etat*,’

‘ *l'etat*, puisqu' ils n'en étoient point encore les *soutiens* et les *defenseurs* : Les Ecuyers appartenioient à la *maison* du maître ‘ qu' ils servoient en cette qualité; ceux qui ne l'étoient pas en- ‘ core, n' appartenioient qu' à la *mère de famille* dont ils avoient ‘ reçu la naissance et la premièrc education.’ *Tom. I. p. 298.*

Tacitus, having described the ceremony of investing the German with arms, adds, ‘ *Haec apud illos toga, hic primus juventae honos, ante hoc domus pars videntur, mox reipublicae.*’ *De Mor. Germ. c. 13.*

This tendency and concurrence of circumstances is striking; and to these institutions we may trace the contempt with which the rights of *minors*, both of high and low condition, were treated, in the middle ages. To be in minority was to be nothing. Before his majority, or the investiture of arms, the individual did not seem a citizen or a subject.

(4) ‘ *Virtutem proprium hominis bonum: Deos fortioribus adesse.*’ *Tacit. Hist. lib. 4. c. 57.*

(5) ‘ *Est et alia observatio auspiciorum, qua gravium bellorum eventus explorant. Ejus gentis, cum qua bellum est, captivum quoquo modo interceptum, cum electo popularium suorum, patriis quemque armis committunt. Victoria hujus vel illius pro praejudicio accipitur.*’ *Tacit. de Mor. Germ. c. 10.*

An instance of the duel is described in *Livy*, *lib. 28. c. 21.* And the prevalence of this mode of trial is mentioned by *Paterculus*, *lib. 2. c. 118.* It was by single combat that the Celtic and Gothic nations decided the succession to offices, when the candidates were numerous and of equal merit. This was leaving it to the Deity to determine their pretensions. It was in this manner, that, among the Gauls, the place of the sovereign Druid was supplied, in cases of doubt. ‘ His autem omnibus Druidibus praeest unus, qui summa inter eos habet auctoritatem. Hoc mortuo, si quis ex reliquis excellit dignitate, succedit. At si sunt plures pares suffragio Druidum allegitur: Nonnunquam etiam de principatu *armis contendunt.*’ *Caesar, de Bell. Gall. lib. 6. c. 12.*

This form of deciding controversies and disputes, continued to prevail after the conquests of the barbaric nations; is to be seen every where in their laws; and became an important article in the jurisprudence of the middle times. The following ordinances illustrate its use and purposes.

‘ Qui terram suam occupatam ab altero dixerit, adhibitis idoneis testibus, probat eam suam fuisse: Si occupator contradixerit, *campo dijudicetur.*’ *LL. Saxonum, tit. 15.*

‘ Si quis Adalingum occiderit DC. sol. componat. Qui liberum occiderit, CC. sol. componat. Et de utroque si negaverit, cum

‘cum xii. juret, aut in *campum exeat*, utrum ille voluerit, ad
‘quem causa pertinet.’ *LL. Angl. et Werinor. tit. 1.*

‘Qui domum alterius noctu incenderit, damnum triplo farciat,
‘et in fredo solid. lx. aut si negat, cum undecim juret, aut *cam-
po decernat.*’ *Ibid. tit. 8.*

‘Si aut calumniator, aut ille cui calumnia irrogata est, se fo-
‘lum ad sacramenti mysterium perficiendum protulerit, et dixe-
‘rit: Ego solus jurare volo, tu si audes nega sacramentum me-
‘um, et armis mecum contendere. Faciant etiam illud, si hoc eis ita
‘placuerit; juret unus, et alias neget, et in *campum exeant.*’
LL. Frision. tit. 11. l. 3.

‘Si mulier in morte mariti sui consiliata fuerit per se, aut per
‘suppositam personam, sit in potestate mariti sui de ea facere
‘quod voluerit: Similiter et de rebus ipsius mulieris. Et si illa
‘negaverit, liceat parentibus eam purgare aut per sacramentum,
‘aut per pugnam, id est, per *campionem.*’ *LL. Longobard. lib. 1.
tit. 3. l. 6.*

Even from rude times, it is observable, that this trial took place at the command of the magistrate. And, it is probable, that it was in a good measure at his discretion, whether it took effect. If the truth was to be investigated by witnesses, so that complete evidence appeared, and there was no room for doubt,

the battle might be avoided. It was, however, much to the taste of martial times. The barbarians, also, believed firmly that Providence actually interfered in their affairs. And this absurdity was encouraged by the Christian clergy, who, like the priests of all religions, found an interest in deceiving the vulgar.

(6) The word *nidering* or *nidernig*, was a term of dishonour among the Normans and Danes ; and, it is told by the historians of William Rufus, that, on an occasion which required the speedy aid of his vassals, including in his summons, that those of them who neglected to repair to him should be accounted *nidering*, his standard was immediately crowded. *Du Cange, voc. Nidering.*

To apply to a person the term *arga* among the Longobards, was to say, that he was a *coward* and a *worthless* fellow ; and this offence to his honour could not be pardoned. If the accuser persisted in the assertion, the *combat* took place ; and, if he confessed his crime, he was subjected to a fine. *LL. Longobard. tit. 5. l. 1.*

Of *arga*, it is remarkable, that, in its original and proper signification, it meant a person who permitted the infidelities of his wife. 'Proprie *arga* is dicitur,' says *Du Cange*, 'enjus uxor inoeciatur, et ille tacet.' *Gloss. vol. 1. p. 319. Spelm. p. 40.* A person of this kind was infamous in the extreme, and generally

of

of the vilest condition. The word *cucurbita* had also this sense; and hence the French *coucourd*, and our *cuckold*. Each of these terms, accordingly, in its enlarged acceptation, came naturally enough to signify a *mean*, *cowardly*, and *stupid fellow*. To have a *caput cucurbitinum*, was to be a *block-head*. And, from the confusion of the proper sense of *cucurbita*, and its enlarged one, the infamy seems to have arisen which, to this hour, constantly attends even an *involuntary cuckold*. It is thus, that even words operate upon manners.

The point of honour in Sweden, in early times, is well illustrated by the following law, which I give in the words of *Stiernhook*, whose book is not commonly to be met with.

‘ Si dicat vir viro probrosum verbum : Non es vir viri compar,
 ‘ aut virili pectore : Ego vero sum vir [inquit alter] qualis tu. Hi
 ‘ in trivio conveniunto. Si comparet provocans, nec provocatus ;
 ‘ talis esto [provocatus] sequior ut dictus fuit, ut qui nec pro fe-
 ‘ mina nec viro sacramentalis esse queat, intestabilis : Si vero com-
 ‘ paret provocatus, nec provocans, quam vehementissime trino
 ‘ immani clamore exclamet, et signum in terra radat, et sit vir
 ‘ ille [provocans] eo deterior, quod verba locutus est, quae prae-
 ‘ stare non ausus sit. Si jam uterque comparent, justis instructi
 ‘ armis, et cadat provocatus, dimidio mulætae pretio [caedes]
 ‘ expiator. Si vero provocans cadit, imputet temeritati. Capi-

‘talis ei linguae suae petulantia, jaceat in campo inexpiatus.’
De Jure Sueonum et Gothorum veteris, lib. i. c. 6.

Among the antient Germans, in the age of *Tacitus*, the point of honour was carried so high, that a gamester having risked and lost his liberty and person on the last throw, submitted to voluntary servitude, allowing himself, though stronger and younger than his antagonist, to be bound and sold by him. ‘Ea est in re prava pervicacia; ipsi fidem vocant.’ *Tacit. de Mor. Germ. c. 24.* The other words of the passage are: ‘Aleam quod mirere, sobrii inter feria exercent, tanta lucrandi perdendive temeritate, ut cum omnia defecerunt, extremo ac novissimo jactu, de libertate et de corpore contendant. Viatus voluntariam servitutem adit: quamvis junior, quamvis robustior, alligare se ac venire patitur.’

It is not foreign to the purposes of this work, to remark, that the passion for play followed the conquests of the barbarians; that many ordinances were made to suppress it; and that, to this hour, it is a *point of honour* to extinguish game-debts. There is something interesting in this subject, and I cannot leave it without starting a conjecture.

The idea of borrowing under an obligation of repayment, was too cultivated for the German gamester. When he had lost every

every thing *, he therefore staked his liberty and his person. Having left his woods, he improved upon this usage ; and, instead of endangering his person, gave a *pledge* as a security that he would pay his loss. ‘ *Wadia dabat.*’ *Lindenb. o. s. Gloss. voc. Wadium.* The usage was not lost. ‘ En 1368,’ says a French historian, ‘ le Duc de Bourgogne ayant perdu soixante francs à la paume contre le Duc de Bourbon, Messire Guillaume de Lyon et Messire Guy de la Trimouille, leur laissa, faute d’argent, sa ceinture : Laquelle il donna encore depuis engage au Comte d’Eu pour quatre vingt francs par lui perdu au même jeu.’ *Le Laboureur, ap. Saint Foix, tom. I. p. 343.*

The custom of *pledges* introduced by gaming, grew common in other transactions, and in debts of every kind. From moveables, which were the first pledges, a transition was soon made to land. Hence the *mortuum-vadium* †, the pawn of land, or the

* It does not appear what the German usually played for. It might be, sometimes, the coins of the Romans. ‘ Jam et pecunia.n accipere docuimus.’ *Tacit. de Mer. Germ. c. 15.* His chains and ornaments, utensils and furs, were probably his common stakes.

† ‘ It is called a *dead-gage*,’ says *Covel*; ‘ because, whatfoever profit it yieldeth, yet it redemeth not itself by yielding such profit, except the whole sum borrowed be likewise paid at the day.’ *The Interpreter, v. o. Mortgage.*

the mortgage ; and hence also the legal doctrine of *distresses* *. Such a mixture is there of whim and accident in the greater as well as the minuter precautions of civil polity !

(7) The forms of trial in the *duel* at common law, and in the *duel* for points of honour, were distinct. This subject will be treated in the sequel.

(8) ' Genus spectaculorum unum atque in omni caetu idem. Nudi juvenes, quibus id ludicum est, inter gladios se atque infestas frameas saltu jaciunt. Exercitatio artem paravit, ars decorem. Non in quaestum tamen aut mercedem. Quamvis audacis lasciviae pretium est, voluptas spectantium.' *Tacit. de Mor. Germ. c. 24.*

There is a remarkable passage in *Procopius* with regard to King *Totilas*, from which we may learn the dexterity which was exhibited in such military sports.

‘ Ipse

* ‘ *Namium et namus*] *Captio*, a Sax. naman, al. nyman capere. Voces prisci fori, haec apud Scotos, illa apud Anglos veteres usitator: Res, bona, animalia, quae per *districtionem* capiuntur significantes: Hoc est, ea quae a possessore ause runtur, legitimèque retinentur, mulætae vel *pignoris* nomine, quousque id fecerit vel praesliterit, quod non sine injuria recusaverit.’ *Spelm. Gloss.* See farther the other *Glossaries*, and *Coke on Littleton*.

‘ Ipse equo eximio vectus, inter geminas acies armorum ludo dum scite ludebat. Equum enim circumagens ac reflectens utroque vertum, orbis orbibus impeditiebat. Sic equitans, hastam in auras jaculabatur, eamque, cum tremula relaberetur, aripiebat medium, et ex altera manu in alterem saepe trajiciens, ac dextere mutans, operam huic arti feliciter navata in ostendebat: resupinabat fese, et flexu multiplici nunc huc nunc illuc ita inclinabat, ut appareret diligenter ipsum a pueritia didicisse saltare.’ *Lib. 4. c. 31.*

These ideas make a figure even in the paradise of the Gothic nations. ‘ Tell me,’ says *Gangler* in the *Edda*, ‘ How do the heroes divert themselves when they are not drinking?’ ‘ Every day,’ replies *Har*, ‘ as soon as they have dressed themselves, they take their arms; and, entering the lists, fight till they cut one another in pieces: This is their diversion. But, no sooner does the hour of repast approach, than they remount their steeds all safe and sound, and return to drink in the palace of *Odin*.’ *The Edda, or ancient Icelandic or Runic mythology, ap. Northern Antiquities, vol. 2. p. 108.* See also *Keyfler, Antiq. Select. Septentr. et Celt. p. 127.*

(9) In the books of the middle times, tournaments are called *ludi militares, militaria exercitia, et imaginariae bellorum prolusiones*. A writer in *Du Cange* says, ‘ Torneamenta, dicunt quaedam nundinae; vel feriae, in quibus milites ex edicto convenire solent,

‘solent, et ad ostensionem virium suarum et audaciae temere congregari, vel congregari.’ *Gloss. voc. Torneamentum.*

These exercises were the great schools of discipline and war. Their high antiquity on the continent may be seen in the dissertations on the history of St Louis. And, there is mention of them in England in the days of King Edgar, and at a more ancient period. *Selden, duello, ch. 3.* Mr Madox was therefore in a great mistake, when he ascribed the rise of the spirit of torneying to the holy wars. *Bar. Angl. p. 281.*

The frequent accidents which necessarily happened in the exercise of these representations of war, through the impetuosity of valour, and the extravagance of heroism; the fulminations of the church; and, above all, the jealousy of princes which was excited by armed nobles and their retainers, gave them powerful checks. They continued, notwithstanding, to be long in fashion. In England, they were practised in the reign of Queen Elizabeth; and their total disappearance was preceded, under the elder James and his son Charles, by a gentle method of them, termed *caroufals*.

Torneaments originally were celebrated by all warriours at their pleasure. In after times, the sovereign, as the head of chivalry and arms, claimed their direction, and issued out his licenses and prohibitions. Richard 1. by the following patent to Hubert, Arch-

Archbishop of Canterbury, gave license for lists or tournaments in five places within the kingdom.

' Scias nos concessisse, quod torneamenta sint in *Anglia* in
 ' quinque placeis, inter *Sarum* et *Wilton*, inter *Warwick* et *Ke-
 lingworth*, inter *Stamford* et *Walingford*, inter *Brakeley* et *Mixe-
 ber*, inter *Bly* et *Tikehill*, ita quod pax terrae meae non infrin-
 ' getur. Et comes qui ibi torneare voluerit, dabit nobis 20 mar-
 ' cas, et baro 10 marcas, et miles, qui terram habuerit, 4 mar-
 ' cas, et qui non habuerit, 2 marcas. Nullus autem extraneus
 ' ibi attorneabit. Unde vobis mandamus, quod ad diem tornea-
 ' menti habeatis ibi 2 clericos et 2 milites vestros, ad capiendum
 ' sacramentum de comite et barone, quod nobis de praedieta pe-
 ' cunia ante torneamentum satisfaciet, et quod nullum torneare
 ' permittant antequam super hoc satisfecerit; et inbreviari faci-
 ' ant quantum et a quibus receperint. Et 10 marcas pro carta
 ' ad opus nostrum capiatis, unde comes *Sarum*, et comes de *Clara*,
 ' et comes de *Warrena* plegii sunt. Teste meipso, apud villam
 ' episcopi 22 die Augusti.' *Ex lib. Rubro Scaccarii, ap. Selden
 in the Duello, ch. 3.*

Edward I. and Edward III. granted the liberty of holding yearly a just *viris militaribus comitatus Lincoln*. Richard Redman, and his three companions in arms, had the license of Richard II. *bastiludere cum Willielmo Halberton cum tribus sociis
 apud civitat. Carliol.* And a similar liberty was granted to John

de Gray by Henry IV. *Cottoni Posthuma*, p. 63. Edward I. commanded, by proclamation, that no tourneys or justing, or seeking of adventures, and no feasts of arms should be celebrated or undertaken without his permission. ‘Publice fecit
 ‘proclamari, et firmiter inhiberi, ne quis, sub forisfactura terra-
 ‘rum et omnium tenementorum, torneare, bordeare, justas face-
 ‘re, adventuras quaerere, seu alias ad arma ire praesummat, sine li-
 ‘centia Regis speciali.’ *Cot. Post. p. 67.* There are also prohibitions of tourneys by Henry III. and other princes. They command all earls, barons, knights, and others, under their faith, homage, and affection, and under pain of losing their lands and tenements, that they presume not to tourney, make justs, seek adventures, or go to feasts of arms within the realm, without the King’s express leave. See *Appendix*, No. V.

(10) ‘Tum ad *negotia*, nec minus saepe ad *convivia*, proce-
 ‘dunt armati.’ *Tacit. de Mor. Germ. c. 22.*

This usage continued during the middle times. The posterity of the Germans went in armour to their parliaments and public councils, and to their private visits and meetings. Justice, says *Mezeray*, was rendered among the Franks by people in arms: The axe and the buckler were hung upon a pillar in the midst of the *malle* or the court. See his *history under Clotaire II.* From this practice among the Anglo-Saxons, the hundred court was, in some counties, called the *Wapentake*. The hundreder, holding

holding up his lance, it was touched by those of all the members, and thus the assembly was constituted. *LL. Edward. Confess. c. 33.* *Wapnu*, says Whitelocke, is arms, and *tac*, touch. *Notes upon the King's writ for members of Parliament*, vol. 2. p. 39.

To this day, in the kingdoms of Europe, the wearing of a sword is a part of dress. We go in arms to a feast as well as to a battle, and retain, in orderly times, a custom which habitual danger, and the defects of legislation, made necessary to barbarians. The clergy, it seems, pertinaciously opposed the custom, and it was retained with obstinacy. What is more surprising, they have ceased to exclaim against it, and yet it continues!

(11) 'Scutum reliquisse praecipuum flagitium. Nec aut fas
'cris adesse, aut concilium mire ignominioso fas.' *Tacit. de Mor. Germ. c. 6.*

Hence a high composition was allowed to the Frank, who had been reproached injuriously with the loss of his shield. 'Si quis homo ingenuus alio impropriaverit, quod *scutum* suum 'jaetasset, et fuga lapsus fuisset, et non potuerit adprobare, DC. 'den. qui faciunt sol. xv. culpabilis judicetur.' *Paetus legis Salicæ, ap. Georgisch. p. 69.* It was by raising him aloft on a shield, and supporting him on their shoulders, that the Germans proclaimed their sovereign, or lifted up a general to command their armies. *Tacit. Hist. lib. 4. c. 15.* It was by the same ceremony

that the Kings of the Franks were acknowledged. This was their inauguration. The escutcheon or shield, says *Favine*, is the essential note of a nobleman, a knight, and an esquire. *Theatre of Honour*, book 1. ch. 2.

The usages which had their rise from arms, make a curious figure in the Gothic nations. We know from *Tacitus*, that the sounding or clashing of arms, expressed approbation in the German assemblies; that a javelin wet with blood, and a war horse, were the rewards of German valour; that suits of armour were a flattering present to the more distinguished chiefs in the German communities; that an interchange of arms constituted the ceremonial of marriage among this people; and, that their only public amusement was the leaping amidst the threatening points of swords and lances. *De Mor. Germ.* c. 11. 15. 18. 24.

Charlemagne used to seal his treaties with the pommel of his sword: 'With the point of it,' said he, 'I will maintain them.' *St. Foix, Eff. Hyft.* vol. 2. p. 74. To take his arms from a free man, was to deprive him of his rank, and to reduce him to the condition of a slave. *LL. Alfr.* c. 1. And to put into the hands of a slave the arms of a free man, was to give him his liberty. When an individual gave his oath in a court, or would bind himself in the most solemn manner to the performance of his contracts, he laid his hand on his sword. In the judicial combat, the customs growing out of arms were numerous: Thus,

to

to strike a person with a club, or to give him a blow on the face, was to treat him like a villain; because villains were permitted to fight only with clubs, and were not allowed to cover their faces with armour. *L'esprit des Loix*, *liv. 28. ch. 20.* A free man could not part with his sword as a part of his ransom. *LL. Longobard lib. 1. tit. 11. l. 33.* And what shows, in a particular manner, the severity of the forest-laws, the killing of a royal stag interred the lots of the shield, or the reduction of a free man to a slave. *LL. Forgl. Canut. c. 25.* From the change of arms there resulted a change of usages. Thus, when archery was introduced, to wound the finger which sends off the arrow, was punished more severely than the maiming of the other fingers. *Lindenbr. Glosf. voc. Digitus.*

The old Germans rushed to battle with a loud noise, applying their shields to their mouths, that their voices might rise by repercuſſion into a fuller and more sonorous swell. ‘Sunt illis haec quoque carmina, quorum relatu quem *barditum* vocant, accentuant animos, futuraeque pugnae fortunam ipſo cantu augurantur; terrent enim, trepidantve, prout sonunt acies. Nec tam voces illae, quam virtutis concentus videntur. Affectatur prae-cipue asperitas soni, et fractum murmur, obiectis ad os teutis, quo plenior et gravior vox repercuſſu intumescat.’ *Tacit. de Mor. Germ. c. 3.*

It merits observation, that, from this usage, there grew the *cry d'armes* of the middle ages. These cries were supposed to incite to valour, and to make the soldier precipitate himself upon the enemy. *Montjoie Saint Denis*, was a famous cry of the Franks. *Deus adjuva, Deus vult*, were cries during the crusades. Every banneret, or every knight who had a banner, had a cry peculiar to himself and the troops under him. Barons had also their cries. There were thus general and particular cries. While fiefs and the feudal militia continued, these cries prevailed in Europe. They were lost on the introduction of an improved military discipline, and of standing armies. Perhaps, it is to these cries, that we must trace the origin of the mottos to ensigns armorial.

(12) ‘*Scuta lectissimis coloribus distinguunt.*’ *Tacit. de Mor. Germ. c. 6.*

On the foundation of the *fagum*, or the short vest of the Gaul and the German, which covered his arms, shoulders, and breast, *coats of arms* arose. ‘*La cotte d'armes a été le vêtement le plus ordinaire des anciens Gaulois: il estoit appellé par eux fagum, d'où nous avons emprunté le mot de *saye*, ou de *sayon*.*’ *Dissert. 1. sur l'Hiſtoire de St Louis, p. 127.* ‘*Tegumen omnibus fagum,*’ says *Tacitus, c. 17.*

According to this instructive historian, the *fagum* was adorned with spots and with bits of fur. ‘*Eligunt feras, et detracta velamina spargunt maculis, pellibusque belluarum.*’ *c. 17.* And

we

we know from *Herodian*, that it was sometimes ornamented with silver. *Lib. 4.*

These things are very curious ; and it is impossible not to see in them the *colours*, the *furs*, and the *metals* which are the materials of the science of blazonry.

When *Tacitus* mentions the shield, he takes occasion to remark, that the German warriours had the knowledge of *coats of mail*, and of *head-pieces* or *helmets*, but seldom made use of them. His words are ‘ *Paucis loricae, vix uni alterive caslis, aut galea.*’ *c. 6.* They were about to be more fashionable.

(13) *Valer. Maximus*, *lib. 5. c. 6.* *Florus*, *Rom. Rer. Hist.* *lib. 3. c. 3.*

(14) These captives were of the tribe of the *Catti*, a Germanic people ; for, it is surely this tribe that *Dio* means, when he speaks of the *Cenni*. ‘ *Horum captae a Romanis uxores, interrogatae ab Antonino, utrum vendi, an occidi malent, mori se malle responderunt : quumque essent postea venditae, omnes mortem sibi consicerunt : Nonnullae una filios interfecerunt.*’ *Excerpt e Dion. p. 876.* A multitude of examples, to the same purpose, might easily be collected, if it were necessary.

But,

But, while we reflect on these things, it must not be fancied, that the German women were deficient in gentleness. A high independent spirit is not inconsistent with the softest passions. There are a few beautiful and energetic words in *Tacitus*, which may be employed on this occasion, and finely express the distinctive characters of the sexes in antient Germany. ‘ *Lamenta ac lacrymas cito: dolorem et tristitiam tarde ponunt. Feminis lugere honestum est; viris meminisse.*’ *De Mor. Germ. c. 27.*

(15) *Tacit. de Mor. Germ. c. 7.*

(16) *Saint Foix, Essais Historiq. sur Paris, tom. 5. p. 184.*

(17) ‘ *Regnator omnium Deus, cetera subjecta atque parentia.*’ *Tacit. de Mor. Germ. c. 39.* This testimony of the purity of the German theology, is well illustrated by the following passage of the Icelandic Edda.

‘ *Ganglerus orsus est tunc suum sermonem. Quis est supremus, seu primus decorum? Har. respondet: Qui nostra lingua Pantopater dicitur. Tunc Gang. Ubi est hic Deus? Aut quid potest efficere? Aut quid voluit ad gloriam suam manifestandam? Har. resp. Ille vivit per omne aevum, ac gubernat omnne regnum suum, et magnas partes er parvas.*’ *Edda, ap. Northrn Antiq. vol. 2. p. 283.*

(18)

(18) 'Auspicia, sortesque ut qui maxime observant.' *Tacit. de Mor. Germ. c. 9.* See also, *Du Cange*, voc. *Aucones et Sors*. The following form of divination was common to all the German tribes. 'Virgam frugiterae arbori decifam, in surculos am-
'putant, eosque notis quibusdam discretos super candidam ves-
'tem temere ac fortuito spargunt. Mox si publice consulatur fa-
'cerdos civitatis, siu privatim, ipse pater familiae precatus deos,
'coelumque suspiciens, ter singulos tollit, sublatos secundum im-
'pressam ante notam interpretatur.' *De Mor. Germ. c. 10.* Of this folly, there is yet a remain in the *Baguette Divinatoire* of the miners in Germany; and it is to be observed, that the heralds of the Franks had *consecrated twigs*, which they bore as the emblems of peace. Thus the heralds sent by Gundobald to Guntram appeared 'cum virgis *consecratis*, juxta ritum Fran-
'corum, ut scilicet non contingerentur ab ullo.' *Gregory of Tours, lib. 7. c. 32.* But, what is more remarkable, these *twigs* came to figure in the investiture of lands. Hence the feoffment or fassine *per fustem et per baculum, per virgam et per ramum*. Hence the *tenure par la verge*, which is formally treated by Littleton. On what a simple foundation does there rise institutions, important and interesting in business and society!

(19) Hence the Gothic ordeals, the fire ordeal, and the water ordeal. Of the antiquity of these trials I have spoken in another work. *Dissert. on the Antiq. of the Eng. Constitut. part 4.* It is observable, that the trials of fire and water, though absurd

in the greatest degree, were much encouraged by the Christian clergy. What is more disgraceful to them, they invented modes of trial, founded in the same superstition, and not less absurd. These were the judgment of the cross, the corseled or consecrated morsel, the Eucharist, and the *sortes sanctorum*. By the first, the criminal was to remain with his arms extended before a cross for six or seven hours, without motion. If he failed in sustaining this trial, he lost his cause, and was judged guilty. By the second, the accused person swallowed a bit of bread or cheese, over which the priest had muttered a form of execration. If he was guilty, he was suffocated by the morsel; if innocent, he escaped without injury. In the judgment of the Eucharist, the symbols of the blood and body of Christ were employed; and they convicted the guilty, by acting as a poison, which inflicted death or sickness. The *sortes sanctorum* consisted in the opening, at a venture, the Bible, or any holy book, and in considering as oracular the first passage that presented itself. See *Du Cange, voc. Crux, Corseled, Eucharistia, Sors.* This impiety, and these impositions on the common understanding of mankind, advanced the temporal emolument of the priesthood; an end, which is at all times more important to them than the interests of religion and virtue.

(20) ' Matrem Deum venerantur. Insigne superstitionis, *formas aprorum* gestant. Id pro armis omniumque tutela, *securum deae*

‘*deae cultorem etiam inter hostes praefstat.*’ *Tacit. de Mor. Germ.*

c. 45.

‘I know a song,’ said *Odin*, ‘by which I soften and enchant the arms of my enemies, and render their weapons of none effect. I know a song which I need only to sing, when men have loaded me with bonds; for the moment I sing it, my chains fall to pieces, and I walk forth at liberty. I know a song useful to all mankind; for, as soon as hatred inflames the sons of men, the moment I sing it, they are appeased. I know a song of such virtue, that, were I caught in a storm, I can hush the winds, and render the air perfectly calm.’ *The Magic of Odin*, ap. *North. Antiq.* vol. 2. p. 217. *Du Cange, Literae Solitoriae, et voc. Incantare.*

By secret or magical operations, it was not only supposed, that men could defend themselves against all dangers whatever, and render themselves invulnerable; but that they could even change themselves into wolves, and other animals. The word *werwolf* expressed this metamorphosis, and the extravagancy is to be traced to a distant antiquity. ‘*Neuri, ut accepimus, statis temporibus in lupos transfigurantur; deinde, exacto spatio quod huic sorti attributum est, in pristinam faciem revertuntur.*’ *Solinus*, c. 15. To late times this ridiculous fancy was continued down among the Irish; and *Camden* was puzzled to account for it. *Britannia by Gibson*, vol. 2. p. 1350.

(21) These things appear clearly and strongly from the laws which were made against them, after the introduction of Christianity, and from other authentic evidence. *Capit. Kar. et Lud. lib. 7. LL. Longobard. lib. 2. tit. 38. Du Cange, voc. Fons, Arbor, &c. Pelloutier, Hist. des Celtes, vol. 2. edit. par Mons. de Chiniac.*

(22) *Du Cange, voc. Fadus, Fada, Caragus, Dufsi, Folleti Daemones, Tempestarii. Edda. Keyller, Antiq. Septentr. et Celt.* Here we have the source of the wonders and extravagancies of the old romance.

(23) ‘Deo imperante quem *ad effe bellantibus* credunt.’ *Tacit. de Mor. Germ. c. 7.* This deity was called *Teut* or *Tis*. After the age of *Tacitus*, if I am not mistaken, he had usually the name of *Odin*; and, it is of *Odin* that *Wormius* thus expresses himself, ‘*Suam implorantibus opem in bello, instar senis monosculi equo insidentis, et albo clypeo tecti, quandoque se conspiciendum praebuit.*’ *Monument. Dan. c. 4.*

(24) Traces of the spirit of gallantry and love, it is to be remarked, appear in a striking manner, even in the religious system of the Gothic nations.

‘*Freya*,’ says the *Edda*, ‘is the most propitious of the goddesses. The place which she inhabits in heaven is called “the “union

“union of the people.” She goes on horseback to every place
‘where battles are fought, and asserts her right to one half of
‘the slain; the other half belongs to Odin. Her palace is large
‘and magnificent; thence she falls forth in a chariot drawn by
‘two cats. She lends a very favourable ear to those who sue for
‘her assistance. It is from her that the ladies have received the
‘name which we give them in our language. She is very much
‘delighted with the songs of lovers; and such as would be hap-
‘py in their amours, ought to worship this goddess.’ *p. 76.*

In another fable of the *Edda*, there are the following particulars. ‘Gefione is a virgin, and takes into her service all chaste
‘maids after their death. Fylla, who is also a virgin, wears
‘her beautiful locks flowing over her shoulders. Her head is
‘adorned with a golden riband. She is entrusted with the toil-
‘lette and slippers of Frigga, and admitted into the most impor-
‘tant secrets of that goddess. Siona employs herself
‘in turning men’s hearts and thoughts to love, and in making
‘young men and maidens well with each other. Hence lovers
‘bear her name. Lovna is so good and gracious, and accords
‘so heartily to the tender vows of men, that, by a peculiar power
‘which Odin and Frigga have given her, she can reconcile lo-
‘vers the most at variance. Varra presides over the oaths that
‘men make, and particularly over the promises of lovers. She
‘is attentive to all concealed engagements of that kind, and pu-
‘nishes

‘ nishes those who keep not their plighted troth.’ *Ibid.* p. 96.
97.

It is also remarkable, that, in the Gothic Elysium, it was beautiful virgins named *Valkyriae*, who poured out their hqaur to the heroes. *Keyster, Antiq. Septr. et Celt.* p. 152.

(25) *St Palaye*, speaking of the candidates for chivalry, says, ‘ Les premières leçons qu’on leur donnoit regardoient principalement *l’amour de Dieu et des dames*, c’est à dire, la religion et ‘ la galanterie.’ *Mem. sur l’ancienne cheval.* tome 1. p. 7. The Christian knight was not less devout than the Pagan warriour. Anciently, during the celebration of mas in every country of Europe, he drew his sword, and held it out naked, in testimony of his readiness to defend the faith of Christ. *Favine*, p. 54. *Keyster, Antiq. select. Celt.* p. 164.

It was the influence of such manners which induced ‘ that agreeable libertine Boccace very seriously to give thanks to *God Almighty* and the *Ladies* for their assistance in defending him ‘ against his enemies ;’ and which made Petrarch compare ‘ his mistress Laura to Jesus Christ ;’ circumstances which appeared so absurd to Mr Hume. See his *Essays*, p. 277.

When the Count de Dunois was about to attack the English army which besieged Montargis, la Hire, a knight and a man of fashion

fashion who served under him, having received absolution, joined devoutly his hands, and thus prayed. ‘ Dieu, j’te prie que ‘ tu fasses aujourd’hui pour la Hire autant que tu voulrois que ‘ la Hire soit pour toi, s’il étoit Dieu, et tu fusses la Hire.’ *St Foix, Eff. hist. tome 1. p. 347.*

A picture, not less strange, and still more profane, is in the poetry of *Deudes de Prades*, a canon who had the reputation of being wise and spiritual. He thus laments the death of Brunet, a troubadour, or one of the provencal bards. ‘ Il chantoit si ‘ bien, que les rossignols se taissoient d’admiration pour l’entendre. ‘ Aussi Dieu l’a t’il pris pour son usage. Je prie Dieu de le pla- ‘ ccer a sa droite. Si la Vierge aime les gens courtois, qu’elle ‘ prenne celui-la.’ *Histoire littéraire des Troubadours, tome 1,* p. 320.

These strokes are expressive, and illustrate, more than the most careful reasonings, the nature and spirit of the devotion of the ages of chivalry. Amidst the decencies and the proprieties which philosophy introduces in cultivated times, we look back, with surprise, to this gross familiarity with the supreme Being, and to this blasphemous insolence. Yet, it is difficult, at the same time, not to remember, that these things are equalled, if not exceeded, among us, by those gloomy and fanatical men, who, having got what they term the *new light*, conceit themselves the society of the *elect*, and the *friends of God* !

S E C T I O N V.

(1) **T**HE character or station which preceded knighthood, was that of the *ecuyer*, or armour-bearer. The candidate for chivalry had formerly been a *page*, a *valet*, or a *damoisel*. The last term was applied to the sons of men of rank. *G. André de la Roque, Traité de la noblesse*, p. 7. *Moeurs des François par le Gendre*, p. 63. *Daniel, Hist. de la milice Françoise*, tome 1. p. 94. 95. *St Palaye Mem. sur l'anc. Cheval. partie 1.*

In those times, the terms *page* and *valet* were not expressive of meanness and low condition, as at present. *Du Cange, voc. Valeti et Domicellus*. Sir John Fortescue, who was chief justice under Henry VI. has observed, when speaking of England, ‘*Sunt Valecti diversi in regione illa qui plus quam sexcenta scuta per annum expendere possunt.*’ *De Laud. Leg. Angliae*, c. 29.

(2) The age of knighthood, it is probable, varied with the nature and weight of the arms which were in use at different periods. In general, it has been fixed by antiquaries and historians at 21 years. This rule, however, could be infringed in favour

favour of signal merit or high birth. The *adulatio* of the knight commenced in his seventh year. In that tender age he learnt his attention to the art of war, his intrepidity, and his courage.

Daniel, Milice Françoise, lib. 3. ch. 4. Reliq. Spelman, p. 174.
St Palaye, Mem. sur l'anc. Cheval. partie 1.

(3) The power of the German priests did not escape the penetration of *Tacitus*. ‘Neque animadvertere, neque vincire, neque verberare quidem nisi sacerdotibus permisum.’ *De Mor. Germ. c. 7.* The Christian priests were no less selfish and ambitious. In every country of Europe, they attained immense wealth, and prodigious influence. They presided in the inferior courts with the civil magistrates; they took their seats in the national assemblies; and, in the preambles of the barbaric laws, they are often mentioned next to the Kings themselves. ‘Incipiunt,’ says the prologue to the Capitularies of Charlemagne, ‘capitula regum et episcoporum, maximeque nobilium omnium Francorum.’ *Baluz. Capit. Reg. Franc. tome 1. p. 698.* It is thus, also, in some of the prefaces to the Anglo-Saxon laws. The powers they assumed were exorbitant, and often improperly exercised. To use the strong language of *Bacon*, ‘they were lovers of lordships, and troublers of states.’ *Hist. and polit. discourse on the laws and government of England.*

(4) Selden, Tit. hon. part. 2. ch. 5. sect. 34. 35. Ashmole, *Institutions of the Garter*, ch. 1. sect. 9. Du Cange, voc. Miles.

Daniel, *Milice Françoise*, lib. 3. ch. 4. La Roque, p. 354. 356. A description of the ceremonies used at the creation of knights of the bath, is inserted in the *Appendix*, No. 6. They were nearly the same with those employed in the creation of the knight-bachelor, and illustrate the manners of old times.

(5) The *festivalum tyrocinii*, which is the name given in the old historians to the rejoicings on the investiture of knighthood, often lasted many days; and, in the cases of persons of distinction, was solemnized with tournaments and shows. The season of tournaments was also embraced as a fit occasion for conferring knighthood on those whose birth and fortune did not entitle them to exhibit these solemnities. And this, from the principle of giving encouragement to the military art. For the same reason, public entries into cities, coronations, and festivals of every kind, were opportunities for the creation of knights.

(6) Spelman, voc. *Auxilium*. Ashmole, ch. 1. sect. 9. St. Palaye, tom. 1. p. 195. 248. Daniel, *Milice Françoise*, liv. 3. ch. 4.

When the celebrated Joan d' Arc raised the siege of Orleans, the English commander, the Earl of Suffolk, 'was obliged to yield himself prisoner to a French man called Renaud; ' but, before he submitted, he asked his adversary whether he ' was a gentleman? On receiving a satisfactory answer, he demanded,

‘ manded, Whether he was a *knight*? Renaud replied, That he
 ‘ had not yet attained that honour. *Then I make you one*, replied
 ‘ Suffolk. Upon which he gave him the *blow* with his sword,
 ‘ which dubbed him into that fraternity; and he immediately
 ‘ surrendered himself his prisoner.’ *Hume*, vol. 2. p. 340.

(7) The knights affected great magnificence, and more particularly after the holy wars. ‘ Portabant autem diversi generis
 ‘ species preciosas, aurum et argentum, pallia oboferica, purpu-
 ‘ ram, scutades, ostrum et multiformium vestium ornamenta;
 ‘ praeterea arma varia, tela multiplicis generis, infinitas loricæ,
 ‘ culcitrae de ferico acu variatas operose, papiliones et tentoria
 ‘ preciosissima,’ &c. *Bronpton*, ap. *Baron. Angl.* p. 281.

(8) The horse and armour of a knight were called his *contenementum*, or *countenance*. *Selden, Tit. Hon. part 2. ch. 5. sccl. 37.*

The respectful behaviour, even to vanquished knights, and indeed the extreme honour in which knights in general were held, is exemplified very strongly in the conduct of Edward III. to Eustace de Ribaumont. This prince thought it necessary to leave England privately for the protection of Calais, and carried with him the Prince of Wales. The day after his arrival at Calais, a battle ensued between his troops and the French forces commanded by Geoffrey de Charni, who, notwithstanding the

truce which had been concluded between the contending powers, had bribed the governor of Calais to surrender the place to him. To prevent this circumstance, was the intention of Edward's visit.

This great prince, who fought as a private gentleman under Sir Walter Manny, encountered Eustace de Ribaumont, a hardy and valorous knight, who beat him twice to the ground. Pushed to extremity, Edward had occasion for all his strength and address. After an encounter, sharp and dangerous, he vanquished his antagonist, who surrendering his sword, yielded himself his prisoner. The next day the English enjoyed their victory, and in the evening the French prisoners were invited to sup with the Prince of Wales and the English nobility. After supper, Edward himself entered the apartment, and conversed, in a strain of compliment and familiarity, with the prisoners. His behaviour to his antagonist Eustace de Ribaumont was more particularly attentive, and is thus described by *Froissard*. ‘Vint le Roi à Messire Eustache de Ribaumont : Vous êtes le chevalier au monde que veulx onques plus vaillamment affaillir ses enemis, ne son corps deffendre, ni ne me trouvai onques en bataille où je veulx qui tant me donnaist affaire corps à corps, que vous avez hui fait ; si vous en donne le prix sur tous les chevaliers de ma court par droite sentence. Adonc print le roi son chapelet qu'il portoit sur son chef (qui etoit bon et riche) et le meist sur le chef de Monseigneur Eustache, et dit : Monseigneur Eustache,

‘ stache, je vous donne ce chapelet pour le mieux combattant de
 ‘ la journée de ceux du dedans et du dehors, et vous prie que
 ‘ vous le portez cette année pour l’amour de moi. Je sai que
 ‘ vous êtes gai et amoureux, et que volontiers vous trouvés entre
 ‘ dames et damoiselles, si dites par tout où vous irez, que je le
 ‘ vous ai donné. Si vous quite votre prison, et vous en pouvez
 ‘ partir demain, s’il vous plaist.’ *an. 1348.*

(9) Favine, *Theater of Honour*, book. 1. St Palaye Mem.
 sur l’anc. Cheval. partie 4. Selden, *Tit. hon. part 2. ch. 5. sect.*
 37.

(10) The chief strength of armies consisted, at this time, of cavalry. The skilful management of a horse was, of consequence, one of the great accomplishments of a knight or a warriour. It is to be noticed, that this way of thinking characterized some of the German tribes, even in the age of *Tacitus*. The following energetic description of the *Tencteri*, is applicable, in a striking manner, to the purer ages of chivalry. ‘ *Tencteri*
 ‘ super solitum bellorum decus, equestris disciplinae arte praecel-
 ‘ lunt. Nec major apud Cattos peditum laus, quam *Tencteris*
 ‘ equitum. Sic instituere majores, posteri imitantur. *Hi lusus*
 ‘ *infantium, haec juvenum aemulatio, perseverant fines.*’ *De*
Mor. Germ. c. 32.

(11) Hence the distinction of knights *banneret* and knights *bachelors*; the latter expression denoting the simple knight; the former, the knight who had a standard and followers. The number of knights and esquires who served under the banneret, varied in proportion to his riches, and influence. It is also observable, that this dignity was not always feudal. It was sometimes personal. *Selden, Tit. hon. part 2. ch. 3. sect. 23. and ch. 5. sect. 39. Du Cange, Dissert. sur l'*Histoire de S. Louis. Spelman. voc. Baneretus. Daniel, Milice Françoise, liv. 3. ch. 5.**

(12) Favine, Theater of Honour, book 10. St Palaye, Mem. sur l'anc. Cheval. partie 6.

(13) An old ceremonial of chivalry has these words: 'Le Roy Artus d'Angleterre, et le Duc de Leneastré ordonnerent et firent la table ronde, et les bchours, tournois, et joustes, et moult d'autres choses nobles, et jugemens d'armes, dont ils ordonnerent pour juger, *dames et damoiselles, Roys d'armes et heraux.*' *Dissert. 7. sur l'*Histoire de S. Louis, p. 179.**

(14) The greater tournaments were those given by sovereigns and princes, to which knights were invited from every part of Europe; for, over Christendom, the honour and privileges of knighthood were the same. The lesser tournaments were those given by the barons.

It deserves observation, that the exhibition of torneaments produced an intercourse between the nations of Europe, which could not but contribute to knowledge and civilization. When there were no express prohibitions, knights followed the more important torneaments wherever they were celebrated, for the purpose of studying the art of war; and that they might find signal and proper opportunities of distinguishing themselves, and of cultivating the friendship and acquaintance of illustrious persons of both sexes. It was even the fashion for knights to avoid the restraint of marriage for some years after their installation into the order, that they might consecrate them to the travelling into distant countries, and the visiting of foreign courts, ‘a fin de s'y rendre chevaliers parfaits.’ *St Palaye, tom. 2. p. 8.*

From these circumstances, it is obvious, that the strong conclusions of Dr Robertson, concerning the little intercourse between nations, during the middle ages, are not to be relied upon in all their force, but to be understood with much reserve, and many limitations. *Hist. of Charl. V. vol. 1. p. 325. et seq.*

(15) This present was called *faveur*. *St Palaye, tom. 1. p. 95.* Hence the pieces of lace or riband which are yet sometimes distributed at marriages, are termed the bride's *favours*.

(16) It would be tedious to enumerate and to describe the different forms of exercise or combat which were practised in the torneaments;

torneaments; and it is not necessary in this work. The *joye* was the combat of one against one; *les armes à outrance*, were the combats of six against six, and consisted occasionally of more or fewer persons. *Le pas d'armes*, was the defence of a pass by one or more persons against every assailant. The curious reader may consult the books which treat expressly of torneaments.

(17) Favine on torneaments. *St Palaye, Mem. sur l'anc. Cheval.* partie 2.

(18) 'Effigiesque et signa quaedam detracta lucis in praelium ferunt.' *Tacit. de Mor. Germ. c. 7.* The posterity of the Germans were equally superstitious under the light of the gospel. 'Les Germains,' says *St Foix*, who had this passage of Tacitus in his eye, 'portoient à la guerre des drapeaux, et des figures qui étoient en dépôt pendant la paix dans les vois sacrées.' He adds, 'Nos Rois alloient prendre de même la chappe de S. Martin sur son tombeau, et l'oriflamme dans l'église de S. Denis, et les reportoient lorsque la guerre étoit finie.' *Eff. Hist. sur Paris, tom. 2. p. 187.*

(19) The Edda, Keyser, Antiq. select. Septentr. p. 149.—163. Pelloutier, Hist. des Celtes, liv. 3. ch. 18.

(20)

(20) The discerning reader will perceive, that I describe Christianity from the writings of the clergy ; because, it is always from their representations of it that it acts upon society and manners. I therefore speak politically, and not as an inquirer into theology.

From the pretended friends of Christianity, and from its most zealous partizans, too, I fear, it has received deep and cruel wounds. Its most enlightened and genuine admirers have reason to regret, that it has not been left to defend itself. Were it possible to destroy the comments, the explanations, the catechisms, and the systems of divines, a very considerable blow would be given to infidelity. One can respect the honest doubts of philosophy. But, is it possible to with-hold indignation or scorn, when ability stoops to be uncharitable and disingenuous, when bigotry presses her folly, and spits her venom ?

(21) It was Gregory VII. whose magnificent mind first formed the plan of the croises. The fanaticism, the heroic spirit, and the wild enterprise of knighthood, suggested, doubtless, the idea of them. The advantages they were to give to the holy see, and the church in general, were numerous and great. The Popes not only conferred remission, or pardon of their sins, on all those who yielded to this madness ; but, what was no less interesting, they undertook the protection of their families and affairs. The clergy, of consequence, drew immense wealth, by acting as tu-

tors and trustees for widows, pupils, and minors. The troops designed for these pious projects, could be employed by the church to protect and enlarge its temporalities; and, under the pretence of recovering the holy sepulchre, prodigious sums were to be extracted from women, the devout, the infirm, and the dying.

From the holy wars it followed, that new fraternities of knighthood were invented. Hence the knights of the holy sepulchre, the hospitallers, templars, and an infinite number of religious orders who shed blood, and deformed society, for the glory of God. Many of these acquired great riches, and all of them increased the influence of the church.

Some writers have fancied, but very absurdly, that the croises gave rise to chivalry. Without chivalry the croises could not have been carried into execution. The Popes and the clergy would in vain have preached, that they were the road to salvation and the gates to heaven.

From the cultivated state of manners in the east, some improvement was imported into Europe by the crusaders. But the crusades deserve not to be considered as the first, or indeed as a very powerful cause of refinement in Europe; though it is to be allowed, that they encouraged a respect for order, and ideas of regular government; and that they made additions to the

science

science of heraldry and the fashions of liveries, and heightened the splendour of equipage and dress.

When the medal, however, is reversed, there appear many and great disadvantages. They drained the kingdoms of Europe of their inhabitants ; they took away their riches, and thereby discouraged trade and the arts ; they removed kings and nobles beyond the seas, and introduced into states disquiets and disorder ; they added to the power of the Roman see, by affording favourable opportunities for the operation of its policy, and for establishing the right of the Popes to interfere in the temporal affairs of nations ; and, in fine, they promoted every pious impertinence, and advanced the most abject superstition.

It is also worthy of remark, that some writers, who have no tincture of philosophy, have treated chivalry and the holy wars as primary and distinctive causes of the refinement of the European states ; yet the latter, being really the consequences of the former, their influence ought to have been ascribed to them.

The same want of penetration is perceptible in those, who, while they urge as a primary source of improvement, the revival of literature, hold out, distinctively, as another cause of it, the civil code, or the laws of the Romans. They might, with equal propriety, record as particular and distinctive sources of refinement, the writings of Cicero, of Livy, or of Tacitus.

During the prevalence of chivalry, it is likewise to be observed, that the ardour of redressing wrongs seized many knights so powerfully, that, attended by esquires, they wandered about in search of objects whose misfortunes and misery required their assistance and succour. And, as ladies engaged more particularly their attention, the relief of unfortunate damsels was the achievement they most courted. This was the rise of knights-errant, whose adventures produced romance. These were originally told as they happened. But the love of the marvellous came to interfere; fancy was indulged in her wildest exaggerations, and poetry gave her charms to the most monstrous fictions, and to scenes the most unnatural and gigantic.

(23) ‘*Supplicem aut debilem vel arma abjicientem hostem occidere, etiam hodie apud Gothos sempiterno opprobrio dignum computatur.*’ *Jo. Magnus, Hist. Suec. lib. 4.*

In the battle of Poitiers, fought by the heroic Edward Prince of Wales, the King of France was made prisoner; and the behaviour to the captive monarch illustrates, more than any particulars I can mention, the nobleness of the principles of chivalry. The Earl of Warwick conducted the French king, with many demonstrations of respect, to the Prince’s tent.

‘Here,’ says a great historian, ‘commences the real and the truly admirable heroism of Edward: For victories are vulgar things,

‘ things, in comparison of that moderation and humanity discovered by a young prince of twenty-seven years of age, not yet cooled from the fury of battle, and elated by as extraordinary and as unexpected success, as had ever crowned the arms of any general. He came forth to meet the captive king with all the signs of regard and sympathy ; administered comfort to him amidst his misfortunes ; paid him the tribute of praise due to his valour ; and ascribed his own victory merely to the blind chance of war, or to a superior providence, which controuls all the efforts of human force and prudence. The behaviour of John shewed him not unworthy of this courteous treatment : His present abject fortune never made him forget a moment that he was a king : More sensible to Edward’s generosity than to his own calamities, he confessed, that, notwithstanding his defeat and captivity, his honour was still unimpaired ; and that, if he yielded the victory, it was at least gained by a prince of such consummate valour and humanity.

‘ Edward ordered a magnificent repast to be prepared in his tent for the prisoners, and he himself served the royal captive’s table, as if he had been one of his retinue. He stood at the King’s back during the meal ; constantly refused to take a place at table ; and declared, that, being a subject, he was too well acquainted with the distance between his own rank, and that of his royal Majesty, to assume such freedom. All his father’s pretensions to the crown of France were now bu-

‘ ried

‘ried in oblivion : John, in captivity, received the honours of
‘a king, which were refused him when seated on the throne :
‘His misfortunes, not his title, were respected : And the French
‘prisoners, conquered by his elevation of mind, more than by
‘their late discomfiture, burst out into tears of joy and admira-
‘tion ; which were only checked by the reflection, that such ge-
‘nuine and unaltered heroism in an enemy, must certainly, in
‘the issue, prove but the more dangerous to their native coun-
‘try.’ *Hume, hist. of England, vol. 2. p. 214.* See also *Af-
mole, p. 673.*

Morsels of story like these are precious, and distinguish those historians who can render instructive the details which common writers are only attentive to make agreeable.

—(24) The following was one of the oaths administered by the constable in the duel. ‘A. de B. ye shall lay your hand
‘ayen on the holy gospels, and swere that ye shall have no moo
‘wepnes or poynts, but tho that ben assigned you by the con-
‘stable and mareschall, that is to wite, gleyve, long swerd, short
‘swerd, and dagger : Nor no knyfe, small ne grete ; ne none
‘engine, ne none othir instrument with poynt : Nor stone of
‘virtue, nor hearb of virtue ; nor charme, nor experement, nor
‘none othir enchauntment by you, nor for you, whereby ye
‘trust the better to overcome C. de D. your aduersarie, that shall
‘come ayens you within these lists in his defence ; nor that ye
‘trust

‘trust in none othir thyngē propirly, but in God and your body,
‘and your brave quarell; so God you help, and all halowes,
‘and the holy gospells.’ *Dugdale, origin. juridic.* p. 82.

(25) The solemn taking away of the sword, the cutting off the spurs, the tearing from the body the coat of arms, and the bruising every piece of the knight’s armour, appear to have been ceremonies of the degradation. *Selden, Tit. hon. part 2. ch. 5. Sect. 38. Ashmole, p. 620.*

Religion came also to concern itself in a matter so important. Priests pronounced over the culprit a psalm, containing imprecations against traitors. Water was thrown upon him to wash away the sacred character conferred by his installation into the order. And, at length he was dragged on a hurdle to the church, where there were said and performed over him the prayers and the ceremonies which are used for the dead. *St. Paley, tome 1. p. 320.*

Authorities, Controversy, and Remarks.

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B O O K II.

C H A P T E R I.

S E C T I O N I.

(1) **T**HE ordinary form of homage and fealty varied in some little particulars in different nations, and in the same nations, at different times; and fidelity, while the fief was precarious, could only be promised during the connection of the lord and the vassal. The oldest example of these ceremonies

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Tassilon Duke of Bavaria, to King Pepin, in the year 757. It is thus described. ‘ Tassilo Dux Bajoriarum cum primoribus gentis suae venit, et more Francorum, in manus regis in *vassaticum* manibus suis semetipsum commendavit; fidelitatemque, tamen ipse regi Pipino, quam filiis ejus Carolo et Carlomanno, jure jurando supra corpus Sancti Dionysii promisit.’ *Adelmus, Annal. Franc. ap. Bruffel, liv. 1. ch. 1. sect. 7.*

From the words *more Francorum* it is to be inferred, that these usages were of a still higher antiquity; and, indeed, there can be little doubt, that they prevailed from the earliest times. We find them, accordingly, in the Anglo-Saxon period of our history. *Nichol. Praefat. ad LL. Anglo-Saxon. p. 6. 7.* It is true, notwithstanding, that some eminent authors contend, that they were consequences of the perpetuity of the fief. But the homage of Tassilon, and the Anglo-Saxon fealty, were prior to the general establishment of this perpetuity. And there does not appear any solid reason to think, that these ceremonies were a result of it.

When the exercise of the prerogative of private war among the nobles had spread its disorders and calamity, it became common, both in France and England, to insert a reservation in the form of homage, which limited the fidelity of the vassals of a lord or a chief, to the acts which were not derogatory to the faith they owed to the king. This was intended as an obstruc-
tion

tion to the prevalence of private war, and discovered an advancement in the ideas of civilization and government. Saint Louis established it in France; and it appears in England, in what is called 'The Statute of Homage,' in the seventeenth year of Edward II. By this form or ordinance, the vassal, after expressing the fidelity he is to bear to his lord for the lands he holds, is made to add, *saving the faith I owe unto our Lord the King.*

Out of these usages, in this state of their restriction, there grew, as fiefs died away, the liegeance, or allegiance, which every subject, whether a proprietor of land or not, was supposed to owe to his sovereign. Thus, the oath of liegeance or fealty was to produce the oath of allegiance.

(2) I have endeavoured to investigate, in another work, the high antiquity of the feudal incidents. *Dissert. on the Antiq. of the Eng. Constitut. part 2.* It is a common mistake, that the feudal fruits or incidents were not known in England till the Norman times. This opinion is to be ascribed to the want of curiosity in some inquirers of great name, who have given a sanction to it without deliberation; and to the narrow prejudices of others, who affect to consider the Norman invasion as the proper aera of our political constitution, from the view of paying a compliment to the prerogative of our kings, by holding out Duke William as a conqueror, and by insulting the consequence

of the people. It is in this manner that errors have been engrailed upon errors.

The Anglo-Saxon laws, however, oppose the conceit of the late rise of the feudal incidents, with a force that is not to be resisted. They make an actual and express mention of them. And, for formal illustrations of the feudal incidents in the Anglo-Saxon times, the reader may consult, *The case of tenures upon the commission of defective titles, argued by the judges of Ireland, Mr Selden, in many parts of his works, and Mr Whitaker, in his history of Manchester.*

One of Canute's laws I cannot forbear to mention, because it illustrates very strongly, in this age, the existence of tenures. It ordains that a vassal who deserts, in an expedition against an enemy, shall forfeit his land to his lord; and that, if he should fall in battle, his heriot shall be remitted, and his land go to his heirs. *LL. Canut. c. 75.* This desertion was, in all feudal countries, one of the causes of the escheat or forfeiture of the fief. *Spelm. Gloss. voc. Felonia.* We thus learn, that, in the age of Canute, there prevailed the feudal incidents of escheat and heriot, and that lands were not only granted in tenure, but might go to heirs; a circumstance which may lead us to conceive, that advances were then made towards the establishment of the perpetuity of the fief. This important law is misinterpreted by Wilkins, and, probably, with design. The learned reader will not

not require to be informed, that his version of the Anglo-Saxon laws is often defective and unfaithful.

What is worthy of notice, while many writers of England look to Normandy and Duke William for the introduction of the feudal law, and its incidents, into their nation, an author of France, William Roville of Alençon, in his preface to the grand Coustumier of Normandy, contends, That they were first brought into that duchy from England by Edward the Confessor.

The fact is, that these fruits and this law extended themselves over Europe, from no principle of adoption, but from the peculiarity of manners and situation of the barbaric nations who made conquests. There is no position in history which is clearer than this. And Du Cange, in particular, when we consider the amazing extent of his information, is very much to blame, while he fondly holds out the tenet, that the usages and institutions of the European states proceeded chiefly from the manners and customs of France.

(3) Even in the days of Bracton, after the feudal association had received its most staggering blows, the doctrines of the reciprocal duties of the lord and the vassal, and their perpetual league, are laid down in strong language.

‘ Nihil facere potest tenens propter obligationem homagii,
 ‘ quod vertatur domino ad exhaeredationem vel aliam atrocem
 ‘ injuriam ; nec dominus tenenti, e converso. Quod si fecerint,
 ‘ dissolvitur et extinguitur homagium omnino, et homagii connec-
 ‘ tio et obligatio, et erit inde justum judicium cum venerit con-
 ‘ tra homagium et fidelitatis sacramentum, quod in eo in quo de-
 ‘ linquunt puniantur, sc. in persona domini, quod amittat domi-
 ‘ nium, et in persona tenentis, quod amittat tenementum.’ *De
 leg. et Confuetud. Angl. p. 81.*

(4) The slate, I know, of the people of old, as described by Dr Brady, and Mr Hume, by Dr Robertson, and a multitude of other authors, was uniformly most abject; and yet the power of the nobles is represented as most exorbitant. They dwell on what they term the aristocratical genius of the times, and seem to take a pleasure in painting the abjectness of the people.

It is remarkable, that these notions are contradictory and inconsistent. The nobles had immense influence ; but, in what did this influence consist? Was it not in the numbers and the attachment of their vassals? These were their power ; and, did they oppress them? The reverse is the truth. They treated them with the utmost lenity, and it was their interest to do so. The cordiality, accordingly, of the nobles and the vassals, was maintained during a long tract of time, of which the history has been repeatedly written, without the necessary attention to its nature and

and spirit. The decay, indeed, of this cordiality, was to create confusions and oppression; and, what confirms my remark, it was in this situation, that the power of the nobles was to be humbled.

The error I mention was first thrown out by a writer of ability, because it suited the theory he inculcates. It was adopted, for the same reason, by a writer of still greater talents; and nothing more is necessary to give currency to an absurdity. For, the authors who do not think for themselves, but who gain a fashionable and temporary reputation, by giving dress and trappings to other men's notions, will repeat it till it is believed.

(5) Mr Hume has the following very singular passage. 'None of the feudal governments in Europe had such institutions as the *county-courts*, which the great authority of the conqueror still retained from the Saxon customs. All the freeholders of the county, even the greatest barons, were obliged to attend the sheriffs in these courts, and to assist him in the administration of justice.' *Append. II.*

In every feudal kingdom, notwithstanding this strong affirmation, the *comes* was known, and the *comitatus*. The *comitatus*, or county, was the territory or estate of the *comes*; and the court he held, and in which he presided, was the *county-court*, to

to which the freeholders and feudators were called, and acted as afffeitors or judges. *Du Cange, and Spelman, voc. Comites.*

There might, indeed, be a *comes* who enjoyed not the property of the county, but only a part of it; and, in this case, he was constituted to exercise jurisdiction in it. The sheriff originally was a very subordinate officer. He was sometimes no more than the depute of the *comes*. Hence *vicecomes* was the term by which he was known. Sometimes he was only vested with the care of the king's interest in particular counties. And, in reality, he began only to figure when the jurisdiction of the nobles, in the decline of fiefs, had died away to a shadow.

It is said by Mr Hume, That the great authority of the conqueror retained the county-courts from the Saxon customs. He thus infers, that these courts were favourable to the royal authority. The fact, however, is exactly the reverse. The greater jurisdiction there is in the nobles and the people, the more limited is the prerogative of princes. The county-courts were eminent and formidable supports of the liberty of the subject. And, instead of giving them encouragement, it was the interest of the conqueror to employ his great authority in their suppression.

Mr Hume adds, in the spirit of a writer who had made a discovery, 'Perhaps this institution of county-courts *in England*,
• has

' has had greater effect on the government, than has yet been distinctly pointed out by historians, or traced by antiquaries.'

Ibid.

I have remarked these and other weak places in the works of this illustrious man, that I might show the danger of implicit confidence even in the greatest names. The undue weight of what are called *great authorities*, gives a stab to the spirit of inquiry in all sciences.

(6) The distinguishing freedom of the Germanic tribes was carried with them into their conquests. *Tacitus* said of them, while they were in their woods, ' *De minoribus rebus principes consultant, de majoribus omnes.*' *De Mor. Germ.* c. 11. This peculiarity of government, and this importance of the people, appear not only in the history of these nations, but in their laws. The prologue to the laws of the Franks has these words. ' *Hoc decretum est apud regem, et principes ejus, et apud cunctum populum Christianum, qui infra regnum Merwungorum confidunt.*' *Lindenbr.* p. 399. The lex Alamannorum begins thus. ' *Incipit lex Alamannorum, quae temporibus Chlotarii regis una cum principibus suis, id sunt, xxxiii. episcopis, et xxxiiii. ducibus, et lxxii. comitibus, vel cetero populo constituta est.*' *Lindenbr.* p. 363. In the same sense, we read of the *infinita multitudo fidelium* who appeared in the Anglo-Saxon parliaments. *Spelman's councils.* Originally, as in Germany, in

all the European states, every person who wore a sword had a title to go to the national assembly. The sovereign could enact no new laws, and could repeal no old ones, without the consent of the people.

But, in antient Germany, a representation of the people was even practised on particular occasions ; and we are told by *Tacitus*, that, when Civilis declared war against the Romans, ‘ *con-vocavit primores gentis, et promptissimos vulgi.*’ *Tacit. Hist. lib. 4.* See farther *A Dissertation concerning the Antiquity of the English Constitution, part 5.* After the erection of the European states, the inconveniencies arising from great multitudes of armed men in councils of business, discovered fully the advantages of *representation*. And deputies made their appearance in these to consult and defend the privileges and rights of the people. The exact aera of this establishment is not known in any country of Europe. Its antiquity, however, is beyond all doubt. And the *commons* made a figure in the assemblies of France, termed, *les champs de mars, et les champs de mai*, in the cortes of Spain, and in the wittenagemots of England.

It is probable, that in France, the people were represented before the age of Charlemagne. That they were important in the reign of this politic and powerful prince, there are proofs, positive and certain. The instructive work of *Archbishop Hincmar, de ordine Palatii*, places this matter in a strong light ; and *Abbé Mably*,
who

who copies and comments upon it, acknowledges the supreme power of the assemblies of those days, selects examples of it, and of the interference and consideration of the people. In fact, nothing of any moment or value, in peace or in war, or in any subject whatever, could be done without their approbation. ‘ *Lex ‘consensu populi fit, et constitutione regis.*’ *Capit. Kar. Calv. an. 864. ap. Baluz. tom. 2. p. 177.* This conclusion is supported by express, numerous, and concurring testimonies of antient laws, histories, and ordinances. See *Hotoman, Franco-Gallia, ch. 10. 11. Mably Observat. sur l’Hist. de France, lib. 2. ch. 2. Rymer on the antiquity of parliaments, &c.**. These assemblies were very different from the Etats Generaux of after times, when the rights of the people were insulted, and the legislative power came to reside in the sovereign. Yet, it is not uncommon to confound them ; and, on the foundation of this error, improper conclusions have been inferred against the *commons* of England.

At what period the deputies of the people appeared in the
S f 2 cortes

* Mr Hume, notwithstanding a variety of authorities which oppose his assertions, could express himself to the following purpose. ‘ The great similarity among all the feudal governments of Europe, is well known to every man that has any acquaintance with antient history ; and the antiquarians of all foreign countries, where the question was never embarrassed by party-differences, have allowed, that the *commons* were very late in being admitted to a share in the legislative power.’ *Append. 11.*

cortes of Spain, is uncertain. But the liberty of the Visigoths, who founded that kingdom, was ferocious; their love of independence was fostered by the ills of the Moorish domination; and their sovereigns, during a long tract of time, were kept in a surprising degree of subjection. Like all the other barbaric tribes who made establishments, the individuals among the Goths who wore swords, assembled originally in the councils of the nation; and when the disadvantages of crowded and tumultuous assemblies were uniformly felt, it is natural to conclude, that the deputies of the people were called to represent them.

From design, however, in the Spanish government, from the ravages of the Moors, or from the waste and havock of time, no direct proofs of this representation, it is said, are to be found of an earlier date than the year 1133. Of the appearance of the deputies of the people, at this time, the evidence is produced by *Dr Geddes*; and this writer has also published the writs of summons, which, in the year 1390, required the city of Abula to send its representatives to the parliament of Spain. *Miscellaneous Tracts*, vol. 1. There is likewise evidence of a Spanish parliament in the year 1179, in which the deputies of the people were assembled; and of another in the 1210, in which they assisted as a branch of the legislature. *Gen. Hist. Spayn. ap. Whitelock, Notes upon the King's Writ*, vol. 2. p. 65.

While

While liberty and the deputies of the people made a figure, and while the prerogative of the sovereign was restrained and directed by national councils and assemblies in the other countries of Europe, it seems the height of wildness to conclude, as many have done, that, in England, the inhabitants were in a state of slavery, and that the mandate of the Prince was the law. His condition, so far from being despotic, was every moment exposed to danger and insult. He might be deposed for a flight offence. He was elected to his office. And, his coronation-oath expressed his subjection to the community, and bound him to protect the rights of his subjects.

The Anglo-Saxon laws are proofs, that, instead of governing by his will or caprice, he was under the controul of a national assembly. In the preambles to them, we find, that the *wites* or *sapientes* were a constituent branch of the government. The expression *seniores sapientes populi mei*, is a part of the prologue to the ordinations of King Ina, an. 712. And these *sapientes populi*, or deputies of the people, appear in the laws of other princes of the Anglo-Saxons. *LL. Anglo-Saxon. ap. Wilkins.*

It is very remarkable, that the term *sapientes*, as may be seen in Du Cange, in his explanation of it, expressed, in Italy, in antient times, those who governed the affairs of cities and communities. When men, therefore, of this sort are uniformly mentioned as a part of the Anglo-Saxon wittenagemots, it is
impossible,

impossible, but to prejudice, not to see, that they must have acted as the *representatives* of the people, and must have procured this distinction from the opinion entertained of their wisdom or experience.

By a curious testimony, it is even obvious, that the word *sapientes* must have meant the *commons*. In the supplication *del county de Devonshire*, to Edward III. there are these expressions, ‘que luy please par l’avys des prelats, countees, barons, et *auters sages* in cest present parliament ordeiner,’ &c. This supplication is printed in the 4. Inst. p. 232. In the reign of the third Edward, from the *auters sages* expressing the *commons*, it may surely be decisively inferred, that *sapientes* had the same meaning in older times.

In fact, the expressions which denote the Anglo-Saxon assemblies, allude to their nationality. ‘Commune concilium, ‘conventus omnium, concilium cleri et populi, omnium principum et omnium sapientum conventus,’ &c. are appellations which mark forcibly the interference and assistance of the *commons* *.

In

* Mr Hume has observed, indeed, that ‘None of the expressions of the antient historians, though several hundred passages might be produced, can, *without the utmost violence*, be tortured to a meaning which will admit the *Commons* to be constituent members of the great council.’ Append. 11. It is painful to remark a want of candour so glaring in so great a man.

In the annals of Winchelcomb, an. 811. there is to be seen the term *procuratores*, as expressive of a branch of the wittenagemot. It also occurs in a charter of King Athelstane. And, that the persons denoted by it were the deputies of the people, seems past all doubt, when it is recollect'd, that, in the Spanish writers, this order of men is express'd by *procuradores de las ciudades y villas*. Nay, in Polydore Virgil, we meet the expression *procuratores civium populique.* p. 478. ap. Whitelocke, vol. 1. p. 378.

To these notices I might add a multitude of authorities, respectable and positive. But I mean not now to enter fully into the dispute concerning the importance of the people. To give completeness to the spirit of my present volume, it is sufficient for me to assert the antiquity of the commons, in opposition to an opinion of their late rise, which a modern historian, of great reputation, has inculcated, with that hardness which he displays in all his writings, but with little of that power of thought and of reasoning which does honour to his philosophical works.

Mr Hume, struck with the talents of Dr Brady, deceived by his ability, disposed to pay adulation to government, or willing to profit by a system, formed with art, and ready for adoption, has executed his history upon the tenets of this writer. Yet, of Dr Brady it ought to be remembered, that he was the slave of a faction, and that he meanly prostituted an excellent understand-

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ding, and admirable quicknes, to vindicate tyranny, and to destroy the rights of his nation. With no less pertinacity, but with an air of greater candour, and with the marks of a more liberal mind, Mr Hume has employed himself to the same purposes ; and his history, from its beginning to its conclusion, is chiefly to be regarded as a plausible defence of prerogative. As an elegant and a spirited composition, it merits every commendation. But no friend to humanity, and to the freedom of this kingdom, will consider his constitutional inquiries, with their effect on his narrative, and compare them with the antient and venerable monuments of our story, without feeling a lively surprise, and a patriot indignation.

(7) The general doctrines concerning wardships may be seen in *Craig, lib. 2. Du Cange, voc. Custos, Warda. La Coutume reformée de Normandie, par Bassignage, Art. des Gardes.*

In that instructive collection of records, *The history and antiquities of the exchequer of the Kings of England, by Mr Malox,* there are the following examples of the sale of wardships by the crown, in the times which passed from Duke William to King John.

Godfrey de Cramavill gave xxv l. x s. for the custody of the land of Aketon, which was Ralf de Heldebouill's, and of Ralf's heir during his nouage. Hugh de Flaminavill profered x l. for

for the custody of his sister, with her land. Ralf de Gernemue gave a fine of lx marks, that he might have the custody and donation of Philipp de Niwebote's daughter, with her inheritance. Earl David gave cc marks to have the custody of Stephen de Cameis, with his whole land, till his full age; saving to the King the service of the said land; and Earl David was to make no *destruction* upon it. And Philip Fitz-Robert gave cc l. and c bacons and c cheeses for the wardship of the land and heir of Ivo de Munby, till the heir came to be of full age. *Vol. 1. p.*

323. 324.

In remarking these sales, the value of money in its variations, is to be attended to. From *Mr Madox*, it appears, that, 'in the reign of Henry III. Simon de Montfort gave ten thousand marks to have the custody of the lands and heir of Gilbert de Unfranville, until the heir's full age, with the heir's marriage, and with advousons of churches, knight-fees, and other pertinencies and escheats; and my *Lord Lyttleton* has calculated the amount of this payment, according to the present value of money. 'Ten thousand marks,' he observes, 'containing then as much silver in weight as twenty thousand pounds now; and the value of silver in those days, being unquestionably more than five times the present value, this sum was equivalent to a payment of above a hundred thousand pounds made to the exchequer at this time.' *Hist. of Henry II. vol. 2. p. 297. Madox, vol. 1. p. 326.*

(§) Of reliefs in England, it is sufficient to give the following examples, as they will fully illustrate the oppressions which must have resulted from the exaction of this feudal incident.

In the 5th year of King Stephen, Walter Hait gave v marks of silver for relief of his father's land. Alice, wife of Roger Bigot, gave c and fourscore and xviii l. for her father's land or manour of Belvoir. Humfrey de Bohun paid xxii l. and x s for relief of his father's land. Waleran Fitz William answered xxxiii l. vi s. and viii d. for relief of his land. In the reign of King Henry II. William Fitz William paid xxv marks for relief of his land; Theobald de Valeines xxx l. for relief of six knight-fees; and Robert de Dudaville x marks for relief. In the reign of K. Richard I. Robert de Odavill's son paid c marks for acceptance of his homage, and for relief and seisin of his land; Walter de Niewenton paid xxviii s. and iii d. for seisin of the fourth part of a knight's-fee, which was taken into the King's hands for default of paying relief. William de Novo Merca-to gave c marks, *that the King would receive his reasonable relief*, to wit, c l. In the reign of K. John, John de Venecia gave ccc marks for seisin and relief, and did homage to the King, and was to make the King an *acceptable present* every year. Geoffrey Wake gave cc marks for his relief. *Madox, Hist. of the excheq. vol. 1. p. 316. 317.*

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The minute steps in the history of reliefs, and of the other feudal perquisites, are no part of this work. The reader who would investigate English reliefs still farther, may consult *LL. Guliel. LL. Hen. I. Chart. Johan. &c.* and, for their state in foreign countries, he may consider what is said in *Brussel, usage-general des fiefs, liv. 2. Assises de Jerusalem, and the Glossaries.*

(9) Littleton on tenures, sect. 107. Du Cange, *Disparagare. La Coutume reformée de Normandie.*

(10) Celestia, wife of Richard son of Colbern, gave xl s. that she might have her children in wardship with their land, and that *she might not be married, except to her own good-liking.* William Bishop of Ely gave ccxx marks, that he might have the custody of Stephen de Beauchamp, *and might marry him to whom he pleased.* William de St Marie-church gave D marks, to have the wardship of Robert, son of Robert Fitzharding, with his whole inheritance, with the knight's-fees, donations of churches, *and marriages of women thereto belonging;* and that he might marry him to one of his [William's] kinswomen; provided, that Robert's land should revert to him, when he came to full age. Bartholomew de Muleton gave c marks, to have the custody of the land and heir of Lambert de Ybtoft, *and that he might marry Lambert's wife to whom he pleased,* but without disparagement. Geoffrey Cross gave xl marks, for the wardship of the lands and heirs of *Sampson De Mules,* who held of

the King *in capite*, by serjeanty, with the *marriage* of the heirs. John Earl of Lincoln, constable of Chester, fined ~~mmm~~ marks, to have the marriage of Richard de Clare, for the behoof of Maud, eldest daughter to the said Earl. Gilbert de Maisnil gave x marks of silver, that the King would give him leave to take a wife. Lucia, Countess of Chester, gave ~~n~~ marks of silver, that she might not be married within five years. Cecilie, wife of Hugh Pevere, gave xii l. x s. that she might marry to whom she pleased. Ralf Fitz William gave c marks fine, that he might marry Margery, late wife of Nicholas Corbet, who held of the King in chief, and that Margery might be married to him. And Alice Bertram gave xx marks, that she might not be compelled to marry. *Madox, hist. of the Exchequer*, vol. 1, p. 322—326. 463—466.

These valuable notices are from records in the reigns of Henry II. Rich. I. King John, Henry III. and Edward I.

(11) Henry II. levied an *aid* of one mark *per fee*, for the *marriage* of his daughter Maud to the Duke of Saxony. Of this aid, the proportion of the Earl of Clare for his own knight-fees, and for those of his lady the Countess, of the old feofment, was ‘ fourscore and fourteen pounds and odd;’ and for his fees of the new feofment, it was ciii s. iiid. The feofments which had been made either to barons or knights, before the death of Henry I. were called *vetus seffamentum*. Fees of the new feof-
ment

ment were from the accession of Henry II. This appears from the Black Book of the Exchequer.

Henry III. had an *aid* of xl s. of every knight's fee to make his *eldest son* a knight. When King Richard was taken and imprisoned on his return from the holy wars, an *aid* was given for the *ransome* of his person. The barons and knights paid at the rate of xx. s per fee. *Madox, hist. of the Excheq.* vol. 1. p. 572. 590. 596.

In all cases of aids, the inferior vassals might be called to assist the crown vassals. They were even to contribute to extinguish their debts.

(12) Du Cange, voc. *Auxilium*. Brussel, *Usage-general des Fiefs en France*. Coust. Norman. *Madox, hist. of the Excheq.* vol. 1. p. 614—618.

(13) Spelman, voc. *Felonia*. Lib. *Feud. Etablissemens de S. Louis*, liv. 1. Craig, *Jus Feudale*, lib. 3.

S E C T I O N II.

(1) **I**T is to be conceived, that, originally, little ceremony was employed in the duel. *Book 1. Chap. 2. Sect. 4. and the Notes.* But, as ranks and manners improved, a thousand peculiarities were to be invented and observed. This institution, accordingly, is one of the most intricate in modern jurisprudence. It would be improper to attempt to exhaust, in a note, a topic which would require a large volume. It is only my province to put together some remarks.

I begin with a distinction which has escaped many inquirers, who have thence wandered in contradiction and obscurity. The duel was, in one view, a precaution of civil polity ; in another, an institution of honour. These distinctive characters it bore in its origin. *Book 1. Chap. 2. Sect. 4.* And, in these different respects, it was governed by different forms. The common law, and the ordinary judges, directed it in the one condition ; the *court of chivalry*, or the constitutions which gave a foundation to this court, governed it in the other. In reading what many authors have amassed on the duel, it is difficult to know what refers to

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the former state of the matter, and what to the latter. They either knew not the distinction, or possessed an imperfect notion of it. Even in the researches of Montesquieu, concerning the judicial combat, there is thence, perhaps, a faintness and embarrassment ; and, in the observations of Dr Robertson, on the same subject, the confusion is evident and palpable. See *Note 22. to Charles V.*

It has been affirmed, indeed, that the court of chivalry was not known till the eleventh century, or till a period still later. And, it is probable, that this court, in all its formalities, and in its condition of greatest splendour, existed not in an early age. But there is evidence, that its duties were exercised in very ancient times. And, from an examination of the oldest laws of the barbarians, it is to be inferred, that the business of it, except perhaps in a few instances, was not determined by the common judges. We know, at least, with certainty, that, in England, in the Saxon aera, before a regular court of chivalry was established, points of honour and of war were under the direction of the *heretochs*, while the duel, as a civil rule, was at the direction of the common judges ; and that, in the Norman age, when the court of chivalry was formally in existence, with extensive powers, the *constable* and the *marshal* had succeeded to the jurisdiction of the heretochs. *Spelman, Glouc. p. 400. Sir Edward Coke on the court of chivalry.*

The determination of a doubt, for which no compleat evidence could be produced, was the end of the duel as a civil precaution. The decision of points of honour, and disputes of arms, or the satisfaction of a proud and a wounded spirit, was the end of the duel, as an institution of chivalry. While the common judges of the land managed the duel in the former instance, as an object of common law ; it was governed in the latter by the judges in the court of chivalry, that is, by the constable and the marshal ; and the forms of procedure in these cases were essentially different.

Of the court of chivalry, the jurisdiction regarded matters of war, precedence, and armorial distinctions, as well as points of honour ; and treasons, and deeds of arms committed without the realm, were objects of its cognizance. In a word, where the common law was defective, the powers of the constable and the marshal were competent. 4. *Institut. c. 17.*

Yet, from these officers, there lay an appeal to the sovereign, as the head of arms, and he might stop, by his power, their proceedings. It is thence that we find the Kings of England superseding combats of chivalry. It was as the head of the civil state that they could supersede the combats of right, or at common law. Instances of their jurisdiction, in both cases, are not unusual. An exertion of it, in the duel of chivalry, took place in the intended combat between the Lord Rea and Mr Ramsay.

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The Lord Rae, a Scots baron, impeached Ramsay and Meldrum for moving him beyond the seas, to join in the treasons of the Marquis of Hamilton. Ramsay denied the fact, and offered to clear himself by combat. A court of chivalry was constituted, by commission under the great seal; and the parties were on the point of engaging, when Charles I. interposing to prevent the duel, sent them prisoners to the Tower. *Kennet, complete history of England, vol. 3. p. 64.* An interposition in the duel at common law, was exercised in an intended combat in a writ of right between the champions of Simon Low and Jo. Kine, petitioners, and of Thomas Paramore, defendant. The battle was discharged by Queen Elizabeth. *Spelm. Gloff. p. 103.*

In the duel by chivalry, champions were not usual; because questions of honour required the engagement of the parties. In the duels of right, the parties might have champions, because the trial was merely an appeal to the Divinity, who was to decide the truth by affliting, miraculously, the cause of the innocent person; and this assistance might be manifested either to himself or to his representative. The fashion, however, of martial times, was an inducement to the parties themselves to engage: And, in general, champions were only proper for the old and infirm, for priests, minors, and women. *Du Cange, voce Campiones.*

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Antiently,

Antiently, in the duel of right, there was a discretionary power in the judges to determine in what cases it was necessary ; and this was a proper restraint on the violence with which the duel was courted, in preference to other modes of trial. *Bruffel, Usage general des Fiefs, liv. 3. ch. 3.* Express laws were even made to describe the occasions in which alone it was to be expedient. There is, on this head, the following regulation of Henry I.

‘ Non fiat bellum sine capitali, ad minus x sol. nisi de furto vel
‘ hujusmodi nequitia compellatio sit, vel de pace regis infracta,
‘ vel in illis in quibus est capitale mortis, vel diffamacionis.’ *LL.*
Hen. I. c. 59.

In the reign of Henry II. it was the practice to permit the defendant to take his choice between the assize or jury and the duel. ‘ Habebit electionem,’ says *Braclon*, ‘ utrum se ponere velit *super patriam*, utrum culp. sit de criminis ei imposito, vel non : Vel
‘ defendendi se per *corpus suum*.’ *Lib. 3. c. 18.* This marks the decline of the duel, and accordingly, it gradually gave way to the jury. To this alternative of being tried by one’s country, which expresses the form of the jury, or by the duel, which expresses the appeal to the Divinity, there is yet an allusion in the question proposed to a culprit, and in his answer. *Culprit. How wilt thou be tried?* His reply is, *By God and my country.* There is here a rule of law which has survived its cause or necessity. The alternative is suggested in the question, when no alternative exists. And the answer includes both trials, when

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one only is in practice. Absurdities of this kind, for they surely deserve this name, must be frequent in the progression of jurisprudence in all nations.

The duel of chivalry lost its legality with the fall of the court of chivalry. It left behind it, however, the modern challenge or duel, which it is dishonourable to refuse, and illegal to accept. The jury, which swallowed up the duel at common law, could here afford no remedy.

A punier, though a more useful relic of the honourable court of chivalry, which was once so high in repute, that it was in danger of encroaching on the jurisdiction of other courts, is yet familiar in the heralds who manage armories, descents, and funerals, and who record admissions to the peerage.

The decay of the manners of chivalry, was the distant cause of the fall of this court ; and its immediate one was, perhaps, the jealousy of the great powers of its judges. There has been no regular high constable of England since the 13th year of Henry VIII. And the mareschal dwindled down into a personal distinction, or name of dignity.

In France, points of honour were originally under the cognizance of the maire of the palace ; and this officer, who was to acquire the greatest powers, appeared in times of a remote anti-

quity. *Du Cange, voc. Major Domus.* After the age of Hugh Capet, this dignity was suppressed ; and out of its ruins four courts arose. One of these was the court of chivalry, or the offices of the high constable and marshal. The other courts were those of the high chancellor, the high treasurer, and the great master of France, or the judge of the King's household. For, in the aera of his grandeur, the maire of the palace had engrossed to his jurisdiction whatever related to arms, justice, and finance.

(2) It has been contended, that a knight's fee consisted regularly of a certain number of acres. *Spelman, voc. Feodium. Camden, Introd. to the Britann. p. 246.* But the value of acres must have varied according to their fertility and situation ; and it seems the more probable notion, that a proportion of land, of a determined value, no matter for the quantity of the acres, was what in general constituted a knight's fee. The consideration of the revenue that was necessary for the maintenance of a knight, and for the furnishing of his arms, would direct the extent of the land. The will of the grantor, however, and the consent of the receiver, might constitute any portion of land whatever a knight's fee, or subject it to the service of a knight.

This is put past all doubt by the following remarkable paper in the Black Book of the Exchequer, which certifies Henry II. of the slate of the knight's fee of one of his vassals.

Carta Willelmi, filii Roberti.

Karissimo Domino suo H. regi Anglorum, Willelmus, filius Roberti, salutem. Sciatis, quod de vobis teneo feodum. 1. militis *pauperrimum*, nec alium in eo feodavi, qui vix in sufficientia, et sicut tenuit pater meus. Valete. *Liber Niger Scaccari*, vol. 1. p. 247. *Edit.* 1771.

In the records of England, there is mention also of the *small* fees of the honour of Moreton; and it is supposed that the fees which were granted previous to the death of Henry I. were in general more extensive than those which were posterior to it. *Madox, hist. of the Exch.* vol. 1. p. 649. In England, as well as in France, there are even frequent examples of whole manours which were held by the service of one knight, and accounted as a single knight's fee. *Dugdale's baronage*, vol. 2. p. 107. *Notes sur les Assises de Jérusalem*, par Thaumassiere, p. 252.

But, there were not only poor fees granted out by the crown. There were even grants *in capite* of the half of a knight's fee, and of other inferior portions of it. Of this the charters which follow are an instructive evidence.

Carta

*Carta * Guidonis Extranei.*

Gwido extraneus tenet de Rege Alvin delegam per servitium dimidii militis.

Carta Roberti, filii Albrici.

Domino suo Karissimo H. Regi Anglorum, Robertus, filius Albrici Camerarii, salutem. Sciatis, Domine, quod ego teneo de vobis feodum dimidii militis. Valete.

Carta Willelmi Martel.

Ego Willelmus Martel teneo in capite de rege quartam partem feodi. 1. militis in Canewic juxta Lincolniam de antiquo fefamento, unde debo ei facere servitium, et nichil habeo de novo fefamento in comitatu Lincolniae. *Lib. Nig. Scaccarii, vol. 1. p. 147. 217. 269.*

It was chiefly the polity or the natural beneficence of princes and nobles that varied the condition of fees. At times, the fee was scarcely sufficient for the service required; and, on other occasions, it was infinitely plentiful, and beyond all proportion to the

* Guy Strange.

the military purpose of the grant. Its value, on an average, is, however, to be calculated from records and acts of parliament. From William the Norman till King John, it was in progression, a five, a ten, a fifteen, and a twenty pound land †. In King John's times, it grew to be a forty pound land ; and, before the aera of the act of parliament which took away and abolished the military part of the feudal system, the knight's fee was computed at *L. 200 per annum*. These things are very curious, and might lead to political reasonings of importance. *Spelman, voc. Miles, Ashmole on the Order of the Garter.*

(3) Baronies and earldoms could be created or made to consist of any number of fees whatever. Thus, the barony of William de Albene Brito consisted of thirty-three knight's fees, the barony of Earl Reginald, of two hundred and fifteen knight's fees, and a third part of a fee ; and William de Meschines had a barony of eleven knight's fees. *Maaox, Baronia Anglica, p. 91.* Thus the earldom of Geofrey Fitzpeter Earl of Essex consisted of sixty knight's fees ; and that of Aubry Earl of Oxford, of thirty knight's fees. *Selden, Tit. hon. part. 2. ch. 5. sect. 26.* Instances to the same purpose might be collected in the greatest profusion.

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† Sir William Blackstone seems to think, that the knight's fee, in the reign of the Conqueror, was stated at *L. 20 per annum*, which is certainly a mistake. *Book 2. ch. 5.*

From facts so particular, it is, I conceive, to be concluded, that Sir Edward Coke is mistaken, when he lays it down, that a barony consisted, in antient times, of thirteen knight's fees and a third part, and that an earldom consisted of twenty knight's fees. 1. *Institut.* p. 69. 70. According to this way of thinking, some of the barons and earls whose names are now recited, must have possessed many baronies, and many earldoms; an idea which is surely not only strange, but absurd. The supposition that nobility is inherent in a certain and determined number of fees, which this opinion implies, is a notion, that does not correspond with feudal principles. The nobility was given, not by the mere possession of the fees, but by their erection into an honour by the sovereign. Yet Sir Edward Coke had an authority for what he said. It is the old treatise, termed the *Modus tenendi parliamentum*. This treatise, however, is not of so high a date as the Saxon times, to which it pretends; and the circumstance of its assumed antiquity, with the intrinsic proofs it bears of being a fabrication in the times of Edward III. detract very much from its weight. And, in the present case, it is in opposition to indubitable monuments of history.

I am sensible, that Sir William Blackstone has said expressly, 'That a *certain* number of knight-fees were requisite to make up a barony.' *Book. 2. ch. 5.* He has not, however, entered into any detail concerning this position. I should, therefore, imagine, that he has relied implicitly on the authority of Sir

Edward

Edward Coke, which ought not, perhaps, to be esteemed too highly in questions which have a connection with the feudal institutions *.

Nor is it in England only that examples can be produced to refute this notion about the constitution of baronies and earldoms. In Normandy, five knight's fees might form a barony; and of this the following testimonies are an authentic proof. I.

X x

‘ Ricardus

* That Lord Coke had neglected too much the feudal customs, was a matter of lamentation to Sir Henry Spelman. It is with a reference to them, that Sir Henry thus speaks. ‘ I do marvel many times, that my Lord Coke, adorn-
‘ ing our law with so many flowers of antiquity and foreign learning, hath not,
‘ (as I suppose), turned aside into this field, from whence so many roots of our
‘ law have, of old, been taken and transplanted. I wish some worthy lawyer
‘ would read them diligently, and shew the several heads from whence those of
‘ ours are taken. They beyond the seas are not only diligent, but very curi-
‘ ous in this kind; but we are all for profit and *lucrando pane*, taking what
‘ we find at market, without inquiring whence it came.’ *Reliq. Spelman*,
p. 92.

The neglect which produced this complaint, and drew this wish from this learned knight, is still prevalent. The law in Great Britain is no where studied in its history, and as a science. The student is solicitous only to store his memory with cases and reports; and courts of justice pay more regard to authorities than to reasonings. From the moment that the Dictionary of Decisions was published in Scotland, the knowledge of the Scottish law has declined. Yet the respectable author of that compilation did not surely imagine that he was about to do a prejudice to his nation.

‘ Ricardus de Harcourt tenet honorem S. Salvatoris de domino
 ‘ rege per servitium 4 militum: Sed debebat quinque, quando
 ‘ baronia erat integra.’ 2. ‘ Guillermus de Hommet constabula-
 ‘ riis Normanniae tenet de domino rege honorem de Hommetto
 ‘ per servitium 5 militum, et habet in eadem baronia 22 feoda
 ‘ militum ad servitium suum proprium.’ *Regestrum Philip.*
Aug. Herouallianum, ap. Du Cange, voc. Baronia.

(4) The terms *knight* and *chivaler* denoted both the knight of *honour* and the knight of *tenure*; and *chivalry* was used to express both *knighthood* and *knight-service*. Hence, it has proceeded, that these persons and these fates have been confounded. Yet the marks of their difference are so strong and pointed, that one must wonder that writers should mistake them. It is not, however, mean and common compilers only who have been deceived. Sir Edward Coke, notwithstanding his distinguishing head, is of this number. When estimating the value of the knight's fee at L. 20 *per annum*, he appeals to the statute *de militibus*, *an. 1. Ed. II.* and, by the sense of his illustration, he conceives, that the knights alluded to there, were the same with the possessors of knight's fees; and they, no doubt, had knight's fees; but a knight's fee might be enjoyed not only by the tenants *in capite* of the crown, but by the tenants of a vassal, or by the tenants of a sub-vassal. Now, to these the statute makes no allusion. It did not mean to annex knighthood to every land-holder in the kingdom who had a knight's fee; but to encourage

courage arms, by requiring the tenants *in capite* of the crown to take to them the dignity. He thus confounds *knighthood* and the *knight's fee*. *Coke on Littleton*, p. 69.

If I am not deceived, Sir William Blackstone has fallen into the same mistake, and has added to it. Speaking of *the knights of honour*, or the *equites aurati*, from the gilt spurs they wore, he thus expresses himself. 'They are also called, in our law, ' *milites*, because they formed a part, or, indeed, *the whole of the royal army*, in virtue of their feodal tenuies; one condition ' of which was, that *every one who held a knight's fee* (which, ' in Henry the Second's time, amounted to L. 20 *per annum*), ' was obliged to be knighted, and attend the king in his wars, ' or fine for his non-compliance. The exertion of this prerogative, as an expedient to raise money, in the reign of ' Charles I. gave great offence, though warranted by law and ' the recent example of Queen Elizabeth: But it was, at the ' Restoration, together with all other military branches of the ' feodal law, abolished; and this kind of knighthood has, since ' that time, fallen into great disrepute.' *Book. 1. ch. 12.*

After what I have just said, and what is laid down in the text, I need hardly observe, that this learned and able writer has confounded the knight of *honour* and the knight of *tenure*. And, that the requisition to take knighthood, was not made to *every*

possessor of a knight's fee, but to the tenants of knight's fees held *in capite* of the crown, who had merely a sufficiency to maintain the dignity, and were thence disposed not to take it. See farther *the notes to chapter IV.* The idea that the whole force of the royal army consisted of *knight's honour*, or *dubbed knights*, is so extraordinary a circumstance, that it might have shown, of itself, to this eminent writer, the source of his error. Had every soldier in the feudal army received the investiture of arms? Could he wear a seal, surpass in silk and dress, use ensigns-armorial, and enjoy all the other privileges of knighthood? But, while I hazard these remarks, my reader will observe, that, it is with the greatest deference I dissent from Sir William Blackstone, whose abilities are the object of a most general and deserved admiration.

In this note, and, perhaps, in other places of this volume, I use the expression 'tenant *in capite* of the crown,' which may seem a tautology to many. The phrase, 'a tenant *in capite*,' may, indeed, express sufficiently the royal vassal. It may, however, express a tenant *in capite* of a subject. And this distinction was not unknown in the law of England. *Madox, Bar. Angl.* p. 166. *Spelm. Gloss. voc. Caput.*

(5) It is natural to think, that the number of tenants *in capite* who gave no infestations, could not be great. The following curious records of the age of Henry II. are proofs, however, that

tenants

tenants *in capite*, who gave no infeudations, did actually exist; and, perhaps, they show, by implication, their uncommonness.

Carta Albani de Hairun.

Domino suo excellentissimo H. Regi Anglorum, Albanus de Hairun. Vestræ excellentiae notifico, quod ego in Hertfordscire feodum. 1. militis de veteri fefamento de vobis principaliter teneo, et quod de novo fefamento nichil habeo, nec militem feofatum aliquem habeo. Valete.

Carta Mathaei de Gerardi Villa.

Mathaeus de Gerardi Villa tenet in capite de Domino Rege feodum. 1. militis de veteri fefamento, et nullum habet militem fefatum, nec habet aliiquid de novo. *Liber Niger Scaccarii*, p. 246. 247.

In the same instructive monument, there are other examples of grants *in capite* of single fees; and, in general, it is to be inferred, that, of such grants, there were sub-infeudations. p. 129. 130. 179.

C H A P T E R II.

(1) **L**IB. Feud. lib. 1. tit. 1. Craig, *Jus feudale*, lib. 1.
Spelman. voc. *Feodum*.

(2) An instance of the sovereign selecting the son the most agreeable to him, for enjoying the estate, occurs in England so late as the reign of Henry II. This prince gave seisin to Ralf de Mandevill of the barony of Merswude, because he was *a better knight* than his elder brother Robert de Mandevill. *Madox, Baron. Angl. p. 97.*

It is remarkable, that, among the German nations, similar principles, even in the days of *Tacitus*, had an influence on the rights of succession. ‘*Inter familiam, et penates, et jura successio- num, equi traduntur, excipit filius, non ut cetera maximus na- tu, sed prout ferox bello et melior.*’ *De Mor. Germ. c. 32.*

A singular consequence of these usages made its appearance in the law of England. On the devolution of a peerage to heirs

heirs female, the King might select the fortunate daughter on whom to bestow it. This privilege, beautiful and interesting, was to grow out of martial customs.

(3) *Beneficium*, and *beneficia*, are frequently mentioned in the laws of the barbarians, and, from the description given of them, it is evident, that they were subject to *military* service. A law of the Longobards has this passage. ‘ Per multas interpellationes factas ad nos didicimus, *milites beneficia sua* passim distractahere.’ *LL. Longob. lib. 3. tit. 9. l. 9. ap. Lindenbriog.* Ancient charters allude to their service, by calling them ‘ *beneficia militaria*.’ *Du Cange, voc. Beneficium.* See also a capitulary, an. 807. It is likewise to be observed, that *vassalli*, a feudal term, denoted, in early times, the possessors of benefices. Of this there are proofs in the years 757, and 807. *Du Cange, voc. Vassalli.*

It is commonly thought, that the word *feudum* was not known till about the year 884, when there is certain evidence of its use. Now, this period was, in some countries, posterior to the perpetuity of the fief, and thus *beneficium* and *feudum* were to express the same thing. In fact, in a constitution of the Emperor Charles III. who died in the 888, *beneficium* and *feudum* are employed alternately in expressing a hereditary grant. In the year 1162, there is a charter by the Emperor Frederic I. to Raimond his nephew, giving him the perpetual grant of a county; and, in this charter,

charter, the words *beneficium* and *feudum* are also used alike to express the donation. *Bruffet, Usage général des fiefs*, p. 72. 78. Even in the books of the fiefs, these terms are employed promiscuously in the same sense.

(4) *Chantreau le Fevre* contends, that, under the Kings of France of the first and second race, there were only two kinds of landed property, the *domains* of the Prince, and *allodiality*. This notion, which is the foundation of his system, obliges him to assert, that *benefices* were *allodium*. Inferior writers have followed his fancy. For all ingenious men draw after them a train of book-makers, who are more solicitous to defend their opinions, than to understand them.

That *benefices* were not *propriety* or *allodium*, has been just now said. But it may not be improper to produce express proofs of their distinction. The following laws will serve this purpose.

‘ Auditum habemus qualiter et comites et alii homines, qui
 ‘ nostra *beneficia* habere videntur, comparant sibi *proprietates* de
 ‘ ipso nostro *beneficio*, et faciunt servire ad ipsas *proprietates* ser-
 ‘ vientes nostros de eorum *beneficio*, et curtes nostrae remanent
 ‘ desertae, et in aliquibus locis ipsis vicinantes multa mala pati-
 ‘ untur.’ *Capit. Kar. et Lud. lib. 3. tit. 19.*

‘ Audivimus, quod aliqui reddant *beneficium nostrum* ad alios homines in *proprietatem*, et in ipso placito dato pretio comparant ipsas res iterum sibi in *alodem*; quod omnino cavidum est; quia qui hoc faciunt, non bene custodiunt *fidem*, quam *nobis promissam* habent. Et ne forte in aliqua *infidelitate* inveniantur, qui hoc faciunt, deinceps caveant se omnino a talibus, ne a propriis *honoribus*, a proprio solo, a Dei gratia et nostra, extorres fiant.’ *Capit. Kar. et Lud. lib. 3. tit. 20. ap. Lindenbrog. p. 877.*

The reader may also consult and compare what is collected in *Du Cange*, under *Alodis* and *Beneficium*.

(5) See Chapter 1. and the Notes to it.

(6) Spelman, Littleton, Coke, Houard, Madox, Dalrymple, Blackstone, the Judges of Ireland in the case of Tenures upon the commission of defective titles, &c.

In the elaborate treatise on feuds and tenures by Sir Henry Spelman, his whole argument to show that hereditary fiefs were unknown to the Anglo-Saxons, or at least the great weight of it, rests on the idea, that the feudal incidents were consequences of the *perpetuity* of the fief. Yet it is observable, that this position is constantly supposed, and never proved. He nowhere evinces, that wardship, marriage, relief, aid, and escheat, were necessary

necessary and certain results of the fief, in its condition of perpetuity ; and, in the course of this work, if I do not flatter myself, I have produced evidence, from which it is to be concluded, in the clearest manner, that the feudal incidents were the attendants of the fief in all the steps of its progress.

On a foundation of mere froth, this distinguished antiquary has erected a superstructure that is without solidity, and which the slightest effort may overthrow. Yet it is reported to as an impregnable castle ; and here, vainly secure, many a combatant has thrown down the gauntlet of defiance. If authors were not generally the unthinking copists of each other, it might provoke laughter to consider the gravity with which an opinion is held out as irrefragable, that is in a high degree gross with absurdity, and feeble with weakness.

(7) *Capitul. Reg. Franc. an. 877. ap. Baluz. tom. 2. p. 269.*
Abbé Mably, Observat. sur l'histoire de France, liv. 2.

(8) *Du Cange, voc. Militia.*

(9) *Madox, Bar. Angl. p. 28. 277. 278. Houard, Anciennes loix des François, conservées dans les coutumes Angloises, recueillies par Littleton, discours préliminaire.* *Craig, Jus feud.* *Somner, Treatise of Gavelkind.* *Spelm. Gloss.* *Hume, Hist. of England, vol. 1.* *Hale, Hist. of the com. law.*

(10) Sir Ed. Coke. The Judges of Ireland in the case of tenures Selden, in his titles of honour. Bacon, Discourse on the laws and government of England, &c.

(11) The use of entails, which was not unknown in the Anglo-Saxon times, and the succession which obtained in allodial estates, must have contributed very much to the establishment of the perpetuity of the fief. *LL. Ælfredi, ap. Wilkins.* The general tendency of the fief to this ultimate step, and the immense power of many of the Anglo-Saxon nobles, seem also to confirm the idea, that the existence of its perpetuity might, in some cases, be known in the Anglo-Saxon times. But presumptive arguments, though of great weight, are not to be entirely relied upon in questions of this sort.

There is actual evidence, that Ethelred possessed, as an hereditary fief and earldom, the territory which had constituted the kingdom of Mercia. He had this grant from King Alfred, when he married his daughter Ethelfleda. *Selden, Tit. hon. part 2. ch. 5.* It is testified out of records, that the earldom of Leicester was an inheritance in the days of Æthelbald; and the regular succession of its earls, for a long period, is to be pointed out. *Camden, Britannia by Gibson, vol. 1. p 542.* It is known from old historians of credit, that Deireland and Bernicia were Saxon earldoms, which were not only feudal, but inheritable. *Tit. hon. part 2. ch. 5.*

The

The grant of Cumberland by King Edmund to Malcolm King of Scotland, was also feudal and inheritable; and this appears from the Saxon chronicle, and from the following version of the terms employed in it. ‘ Eadmundus Rex totam Cumberland
 ‘ praedavit et contrivit, et commendavit eam Malcolmo Regi Sco-
 ‘ tiae, hoc pacto quod *in auxilio* sibi foret terra et mari.’ *H. Huntind. ap. Praefat. Episc. Derrenſ. ad LL. Anglo-Sax. p. 7.* The expression *commendare*, indeed, is said by Spelman not to mean a feudal homage. *Feuds and tenures*, p. 35. But the original Saxon evinces this sense; and, in fact, the word *commendare*, notwithstanding the authority of this learned glossographer, is used with the utmost propriety to express a feudal homage. *Commendare se alicui*, was even the marked expression for *faire l'hommage à un suzerain*. See *Du Cange, voc. Commendare et Bruffel, Usige-general des fiefs*, p. 35. 276.

(12) ‘ Volumus etiam, ac firmiter praeccipimus et concedimus,
 ‘ ut omnes liberi homines totius monarchiae regni nostri praedicti,
 ‘ habeant et teneant terras suas, et possessiones suas bene, et in
 ‘ pace, libere ab omni *exactione injusta*, et ab *omni tallagio*, ita
 ‘ quod nihil ab eis exigatur vel capiatur, nisi servitium suum li-
 ‘ berum, quod de jure nobis facere debent, et facere tenentur;
 ‘ et prout statutum est eis, et illis a nobis datum et concessum,
 ‘ jure haereditario in perpetuum per commune consilium totius
 ‘ regni nostri praedicti.’ *LL. Guliel. c. 55.*

It is to be mentioned here as somewhat remarkable, that the laws of Duke William, and especially those of them which relate to the feudal institutions, are represented by many foreign writers, and by our domestic advocates for tyranny, as the mandates or ordinances of a prince who governed by the sword. Yet they were parliamentary acts, and bear this honourable testimony in their bosom.

(13) LL. Edward. Reg. ap. Wilkins, p. 197. Chart. Guil. de leg. Edw. Regis ap. Spelm. Cod. Leg. vet. p. 290.

(14) Spelm. Cod. Leg. vet. ap. Wilkins, p. 295. 296.

(15) LL. Henry I. ap. Wilkins, p. 233. et seq.

(16) Chart. Steph. Reg. de libertatibus, ap. Spelm. Cod. Leg. vet.

‘Sciatis me concessisse, et praesenti charta mea confirmasse,
 ‘omnibus baronibus et hominibus meis de Anglia omnes *liber-*
 ‘*tates et bonas leges* quas Henricus Rex Angliae avunculus meus
 ‘eis dedit et concessit, et omnes *bonas leges et bonas consuetudines*
 ‘eis concedo quas habuerunt tempore Regis *Edwardi*.’ p. 310.

(17)

(17) *Charta libertatum Angliae Regis Henrici II.* ap. Spelm. Cod. p. 318.

(18) *Magna Charta Regis Johannis de libertatibus Angliae*, ap Spelm. Cod. p. 307. et seq.

Many important clauses of the great charter relate to the feudal severities. And, it is worthy of notice, that, from the slight consideration of these severities, it has proceeded, that so many writers have described the feudal institutions as a system intended and formed for oppression. Yet I have clearly shown, that these severities grew out of these institutions from the change of manners ; and that the scheme of benefices or fiefs was not only consistent with liberty, but founded in it.

(19) Hume, *Hist. of England*, vol. 1. p. 185.

(20) There are laws which bear the name of Edward ; but it is acknowledged, on every hand, that their authority is not to be fully trusted. And, in the question treated, they are not of any use, unless it be, perhaps, that they illustrate the existence of fiefs among the Anglo-Saxons. This compilation, however, though posterior to the age of the Confessor, deserves to be examined with more attention than has hitherto been bestowed upon it. M. Houard, a foreign lawyer, whose acquaintance with

Norman

Norman customs is more intimate than with those of the Anglo-Saxons, is the latest writer who seems to have made a study of it.

(21) The following very curious law of William the Norman makes express mention of the *knights' fee* and *knights-service*. It does more. It alludes to a prior law which actually established this tenure, and which was the act of William and his parliament. It is, of consequence, a decisive proof of the introduction of the *knights' fee*, or of *knights-service*, by this prince, and of this only.

‘Statuimus etiam et firmiter praecipimus, ut omnes comites,
 ‘et barones, et milites, et servientes, et universi liberi homines
 ‘totius regni nostri praediæli, habeant et teneant se semper bene
 ‘in *armis*, et in *equis*, ut decet et oportet, et quod sint semper
 ‘prompti et bene parati ad *servitium suum integrum* nobis ex-
 ‘plendum, et peragendum, cuin semper opus adfuerit, secun-
 ‘dum quod *NOBIS* debent de *feodis et tenementis suis* de jure fa-
 ‘cere, et sicut illis statuimus per *commune consilium* totius regni
 ‘nostræ praediæli, et illis dedimus et concessimus in feodo jure
 ‘haereditario.’ *LL. Guill. c. 58.*

(22) ‘Terras militibus ita distribuit, et eorum ordines ita dis-
 ‘posuit, ut Angliae regnum lx millia militum indefinenter ha-
 ‘beret,

‘ beret, ac ad imperium regis, prout ratio poposcerit, celeriter ex-
‘ hiberet.’ *Ord. Vit. lib. 4.*

Sprott, the monk of Canterbury, makes the knight-fees to amount to 60,215, and of these he relates, that 28,115 were in the hands of the clergy. Some writers have made Domesday-book agree with Ordericus Vitalis, as to the number of knight's fees. But they produce not, so far as I have observed, the passage or passages of that monument, which illustrate this opinion. And, it is difficult to conceive, that it can give a complete satisfaction on this head or topic.

(23) Selden, *Tit. hon. part 2. ch. 5. sect. 17.* Madox, *Baron. Anglicæ*, p. 30.

(24) Coke, *I. Institute, sect. 1.*

C H A P T E R III.

S E C T I O N I.

(1) **T**HE military plan of the feudal institutions, or an idea of the militia created by fiefs, may be seen to the greatest advantage in that curious monument, ‘the Black Book of the Exchequer,’ of which it was the object to exhibit, not only a list of the feudal tenants, but of the fees and knights held and provided by them. An article from it, therefore, while it may employ the reflections of the reader, will illustrate the general notion inculcated in the text.

Carta Gervafii Paganelli.

Domino suo dilectissimo Henrico, Regi Angliae et Duci Normanniae et Aquitaniae, et Comiti Andegaviae, Gervafius Paganellus salutem.

Isti sunt milites, de quibus vobis debeo servitium.

Petrus de Bremingeham tenet feod. IX. militum.

Giffardus di Tiringeham feod. trium militum.

Henricus de Mohun feodum. I. militis.

Ricardus Engaine feodum. I. militis.

Robertus de Castreton feodum. I. militis.

Paganus de Embreton feodum. I. militis.

Manifelinus de Ovunges feod. duorum militum.

Petrus de Stamford feodum. I. militis.

Willelmus de Jetingeden feodum. I. militis.

Elias de Englefeld feod. III. militum.

Ricardus de Ditton feod. III. militum.

Philipus de Hamton feod. II. militum.

Willelmus de Abbenwrthe feodum. I. militis.

Willelmus, filius Widonis, feod. III. militum.

Bernardus de Frankelege feod. III. militum.

Gervasius de Berneke feod. III. militum.

Willelmus de Bello campo feod. II. militum.

Willelmus de Haggaleg feod. I. m.

Milo de Ringeston feodum. I. militis et dimid.

Willelmus Buffare feod. II. militum et dim.

Robertus de Eſtingeton feod. I. militis.

Henricus de Oilli tenebat feodum. I. militis.

Haec est summa militum, de quibus Antecessores mei Antecessoribus vestris fecerunt servitium, et ego, vestri gratia, vobis, scilicet. L.

Et isti sunt milites, quibus pater meus et ego dedimus terram de dominio nostro post mortem Henrici, avi vestri, scilicet,

Henricus de Frdinton feodum. I. militis.

Radulfus Mansel feodum. I. militis.

Willelmus Paganellus feodum. I. militis.

Michael filius Osberti et Willelmus de Lovent. feodum dimidi militis.

Godwinus Dapifer tertiam partem. I. militis.

Walterus Mansel feodum. I. militis.

Petrus de Surcomunt feodum dimidii militis.

Galfridus de Rivilli tertiam partem. I. militis.

Liber Niger Scaccarii, vol. I. p. 139. 140.

It is in this form that other vassals of the crown certify, in this work, the services and the knights they were to furnish.

(2) It was enacted by a law of Henry II. ‘ Ut quicunque habet feodum unius militis, habeat loricam, et cassidem, et clypeum, et lanceam.’ *Hoveden, an. 1181.* The variations in the nature of the arms to be provided, at different periods, by vassals

vassals and soldiers, are learnedly explained in an author whom the adorers of tyranny affect to despise, in the manly and spirit-ed work of Nathaniel Bacon, on the laws and government of England.

(3) 'In universum aetimanti plus penes peditem roboris.'
Tacit. de Mor. Germ. c. 6.

(4) Many writers have observed, that it was William the Nor-man who introduced archers into England. But they were known in the Anglo-Saxon armies. A law of Alfred has these words, 'Si quis alteri digitum unde sagittatur absciderit, xv
 ' sol. comp.' See *LL. Alfr. c. 40.* as interpreted by *Lindenbrogi-us, in his Glossary, p. 1389.* Archery was also of high antiquity in the other states of Europe. See *LL. Sal. tit. 31. l. 6. LL. Ripuar. tit. 5. l. 7.* The English were to excel all nations in the use of the bow, and for far shooting. It was the archers who gained the battles of Cressy, Poitiers, and Agincourt.

'King Edward the third,' says *Aycbam*, 'at the battaile of
 'Cressie, agaynt Philip the French King, as Gaguinus the French
 'historiographer plainlye doth tell, flewe that day all the nobili-
 'tye of Frunce onlye with his archers.'

'Such like battaile also fought the noble Prince Edwarde beside
 'Poitiers, where Johne the French Kinge, with his sonne,
 'in

‘ in a manner all the peres of Fraunce, were taken, besides thirty thousand which that daye were flaine, and very few English men, by reason of theyr lowes.

‘ Kinge Henrye the Fifte, a prince perelesse, and most victori-
ous conquerour of all that ever dyed yet in this parte of the
worlde, at the battle of Agincourt, with seven thousand fift-
inge men, and yet many of them sicke, being fache archers,
‘ as the chronicle sayth, that most parte of them drewe a yarde,
‘ flewe all the chivalrye of Fraunce, to the number of iorty thou-
sand and mo, and lost not past twenty-six Englishmen.’ *Tess-
philus, or the Schole of Shsotinge*, p. 112.

(5) ‘ He,’ says *Littleton*, ‘ which holdeth by the service of
‘ one knyght’s fee, ought to be with the King forety dayes, well
‘ and conveniently arrayed for the warre.’ *Tinures, book 2.*
ch. 3. See farther *Du Cange, voc. Feudum militare. Speciman,*
voc. Feudum Hauberticum, et Assises de Jerusalem, avec des
notes, par Thaumassiere, p. 266.

(6) Brussel, *Usage-general des siefs*, vol. 1. p. 164. 168. Da-
niel, *hist. de la milice Françoise*, liv. 3.

In England, in the time of Edward III. his army in France,
Normandy, and before Calais, besides the Lords, consisted of
31294 combatants and attendants; and their pay for one year
and

and 131 days amounted to 127201 l. 2 s. 9 d. The following specification of particulars will furnish an idea of the military pay and service of those times.

‘ To Edward Prince of Wales, being in the King’s service in Normandy, France, and before Calais, with his retinue, for his wages of war, 20 s. a day. Eleven banerets, every one taking 4 s. a day. 102 knights, each 2 s. a day. 264 escuires, each 1 1/2 d. a day. 384 archers on horseback, each 6 d. a day. 69 foot archers, each 3 d. a day. 513 Welshmen, whereof one chaplain at 6 d. a day. One physician, one herald or cryer, 5 ensignes, 25 serjeants or officers over 20 men, each 4 d. a day. 480 footmen, each 2 d. a day.

‘ To Henry Earle of Lancaster, being in the King’s service before Calais, with his retinue, for his wages of war, and one other Earle, each 6 s. 8 d. a day. Eleven banerets, each 4 s a day. 193 knights, each 2 s. a day. 512 escuires, each 1 1/2 d. a day. 46 men at armes, and 612 archers on horseback, each 6 d. a day.

‘ To William Bohun, Earle of Northampton, being in the King’s service in Normandy, France, and before Calais, 2 banerets, 46 knights, 112 escuires, 141 archers on horseback. For their wages as above.

‘ To

‘ To Thomas Hatfield bishop of Durham, 6 s. 8 d. a day. 3
‘ banerets, 48 knights, 164 esquires, 81 archers on horseback,
‘ every one taking as above.

‘ To Ralf Baron of Stafford, being in the King’s service in
‘ the places aforesaid, with 2 banerets, 20 knights, 92 esquires,
‘ 90 archers on horseback. Every one taking as above.’

These things appear in a contemporary record, published by
Dr Brady in his history of England. See *vol. 2. Appendix,*
p. 88.

S E C T I O N II.

(1) In rolls of the militia of France in the year 1236, and preceding that period, which were observed by *Pere Daniel*, there were entered military tenants who were marked down for the service of 5 days, and for other proportions of the ordinary service of forty days. And these are proofs, not only of fees in France, but of the fractions of fees. *Milice Françoise*, p. 55.

This learned author, indeed, not attending to the regulations which made the fractions of a fee give their proportion of the ordinary service, has endeavoured to account for the limited number of days which many tenants were bound to serve, by refined reasonings and conjectures; which show how acutely, and yet how absurdly, a man of ability may employ himself in searching out the truth *.

Littleton,

* Pour ce qui est de ceux que l'on voit dans les roles n'etres obligez qu'a cinq, qu'a quinze, ou vingt-cinq jours, ce furent des concessions particulières, dont il est difficile de conjecturer la cause; ce fut pour quelque service signale rendu à l'etat,

Littleton, having remarked that the ordinary service of the knight's fee was forty days, is careful to add, ' that he, which ' holdeth his land by the moitie of a knight's fee, ought to be

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' with

' l'etat, ou peut-être que leurs ancêtres durant les guerres civiles soumirent au ' Roi leurs châteaux, ou leurs terres à cette condition, ou qu'ils avoient quelque ' autre obligation qui suplloit au service ordinaire; comme, par exemple, de ' faire la garde en certains lieux lorsque l'ennemi approchoit. On voit en effet ' dans ces roles quelques gentilshommes fieffez, obligez seulement à faire le guet ' en certaines occasions dans quelques forteresses.

' Une autre raison peut avoir contribué à la réduction du service à un terme ' plus court qu'il n'etoit autrefois: C'est que sous la première race, et fort avant ' sous la seconde, l'empire François etoit beaucoup plus étendu que sous la troi- ' sième. Il falloit aller chercher les ennemis et les rebelles dans la Germanie, et au ' delà; il falloit passer les Alpes, ou les Pyrénées, et entrer bien avant en Italie et ' en Espagne: Par consequent les expéditions durent beaucoup plus long-tems ' que sous la troisième race, sous la quelle le royaume avoit des bornes beaucoup ' plus étroites? *Liv. 3. ch. 2.*

The wildness of these conjectures does not require to be pointed out minutely, as it will appear from a comparison of the text with this note. Yet I censure not the abilities of this historian. If we could reach the truth in all sciences, we should find, that it is the greatest men who have wandered oftenest. The philosopher, who states sentiments of his own, must necessarily be mistaken at times, and is often to reason hypothetically. The author who would catch the general sense and opinions of the world, has no title to travel out of the right path; and, if his errors are frequent, he deserves to be contemptible. It is not so with the wanderings of the inventive and reflecting mind. Though they merit not approbation, they call for respect. The absurdities of the profound are the results of thought and of courage; those of the shallow are the fruits of mere weakness.

‘with the King twenty days; and that he which holdeth his land by the fourth part of a knight’s fee, ought to be with the King ten days; and so he that hath more, more; and he that hath leſſe, leſſe.’ *Tenures*, p. 69.

In a roll, *de l’oſt de Foix*, in the year 1272, there are the following explicit proofs of the fractions of fees, and of the limited service that was to be given for them.

Gaufridus de Baudreville, praefentavit servitium suum per xx dies pro dimidio feodo.

Johannes Morant dicit, quod debet servitium quarti unius militis.

Johannes de Falesia Scutifer dicit, quod tenet dimidium feodum loricae, pro quo debet, sicut dicit, auxilium exercitus et calvacatae quando per Normanniam levatur, aut servitium per xx dies eundo et redeundo; et si servitium dictorum xx dierum captum fuerit, auxilium praedictum non debet capi nec levari. *See Bruffel, Usage-general des fiefs*, p. 174.

In England, the fractions of fiefs are to be proved by almost every article in the *Black Book of the Exchequer*, and by a multitude of records in *Madox*; and to these authorities I refer the inquisitive reader.

(2) Du

(2) Du Cange, voe. *Membrum Loricae. Craig Jus Feudale*, lib. 1. *Affises de Jerusalem, avec des Notes*, par Thaumassiere, p. 104.

(3) Cowel, *Interpreter*, voc. *Fee Ferm. Spelman*, voc. *Feodi Firma*. Du Cange, voc. *Feudi Firma*.

(4) See what is said by *Mr Baron Dalrymple*, in the masterly sketch he has given of the history of the alienation of land, in his comprehensive and learned treatise concerning feudal property in Great Britain.

(5) Littleton, *Tenures*, sect. 96. Daniel, *Hist. de la milice Françoise*, liv. 3.

(6) In the strictness of the feudal regulations, the estate of the vassal might be forfeited for his neglect of service. But, in general, it seemed equitable, that a fine only should punish his disobedience. *Brussel, tome 1. Affises de Jerusalem, avec des notes par Thaumassiere*, p. 267. *Etablissemens de S. Louis*, liv. 1.

In England, in the Anglo-Saxon times, the forfeiture of the benefice or a fine, as in the other countries of Europe, was the punishment of the refractory vassal. The case was the same in the Norman period of our history. When the King's summons

ad

ad habendum servitium, was issued, it was expected that it would be complied with. The following fines and forfeitures for neglect of service are from records.

‘ The Abbot of Pershore was amerced, for not sending his
‘ knights to serve in the army of Camarun, as he was warned to
‘ do. William de Hastings fined in c marks, that he might
‘ have the king’s favour, because he did not march at the king’s
‘ summons in the army of Normandy. William, bishop of
‘ Winchester, fined, or was amerced, in c marks, because he was
‘ not in the army of Gannok, nor had his service there. Mat-
‘ thew Turpin was disfeised of his land and serjeanty in Winter-
‘ law, because he was not in the king’s service beyond sea. Dun-
‘ can de Lascels was disfeised of three knight’s fees and a half,
‘ because he was not with the king in his army of Scotland,
‘ with horses and arms. Roger de Cramavill was disfeised of
‘ his land, because he did not go with the king in his voyage to
‘ Ireland. Malgar de Vavasur was disfeised of his land, because
‘ he neither went with the king into Ireland, nor made fine for
‘ the voyage.’ *Madox, Hist. of the Exchequer*, vol. 1. p. 662.
663. See farther *Baron. Anglic. book. 1. ch. 5.*

(7) Littleton, tenures, sect. 95. Du Cange, Gloss. voc. Scutagium.

(8)

(8) Daniel, *Milice Françoise*, liv. 3. Du Cange, voc. Coterelli, *Brabanciones*, *Brabantini*. Hume, Hist. vol. 1. p. 308.

In France, it is said, that mercenaries were not employed in considerable numbers, till the reign of Philip the August. In England, it is thought, they were first known under Henry II. From the causes I mention, it is probable, that their use must have been familiar, and even extensive, in both countries, in earlier times.

(9) *Baronia Anglica*, book 1. ch. 6. Daniel, *Milice Françoise*, liv. 3.

(10) 'The *religious*,' says *Madox*, 'insisted that they held all their lands and tenements in *frankalmoigne*, and not by knight service. This allegation was used with success by the abbot of Leycester, the priour of Novel-lieu without Staunford, and the abbot of Pippewell.' He cites the records which prove these frauds; and, in another place, appealing also to records, he has these words. 'The abbot of St Austin had a great success in defrauding the king of his services. The abbot, it seems, had been feoffed to hold by the service of fifteen knights. Of these fifteen, he found means to conceal twelve, and answered to the king with three only.' *Baron. Angl.* p. 109. 114.

(11) A record of Henry III. says of Richard Crokel, 'Faciet servitium tricessimae partis feodi j militis.' A record of the same prince, says of John Hereberd, 'Faciet servitium sexagesimae partis unius feodi.' *Hist. of the Exchequer, vol. 1. p. 650. 651.* A variety of instances, to the same purpose, are to be collected.

On the supposition that the fractions of a fee beyond the eight parts, were not properly its members, the demands of service for the thirtieth and the sixtieth parts of a fee, must have been encroachments and severities, against the usual practice and usages of fiefs. If *service*, however, was required for such fractions, the assessment of a *scutage* on the tenants of knight-service would necessarily subject them in their proportion of payments. And the difficulties attending either the exaction of these services, or these payments, must have been infinite.

It is to be confessed, that the giving the thirtieth or the sixtieth part of the service of forty days, which was the usual term of the service of the military tenants, has a strange aspect. Perhaps the grants I mention were not regulated by the usual rules which directed fees. It is well known, that there were tenants in knight-service who were bound to give, not the usual service of forty days, but the attendance of themselves and their knights, both at home and abroad, at all times, and wherever it should

should be demanded. Even in this view, however, it is difficult to comprehend the regulations which must have governed the fractions of such fees.

But there were also vassals in knight-service whose stipulated time in the field and in expeditions was sixty days. See *Etat-blaissemens de S. Louis*, p. 23. There might thus, by the agreement of superiors and tenants, be stipulated services for one hundred, two hundred, or any definite number of days whatever. On this principle, it is easy to account for the fractions of fees which gave service for the thirtieth, the sixtieth, or any such proportions of a fee. In this state of the matter, however, the fractions I speak of in the text, though out of the common usage of fiefs, must have been *members* of the fee.

In the courtly and agreeable introduction to the History of Charles the Fifth, in the *View of the Progress of Society in Europe, from the Subversion of the Roman Empire, to the Beginning of the Sixteenth Century*, of which the scheme is so comprehensive, it is remarkable, that, amidst a wide variety of other omissions, there is not even the slightest consideration of knight-service, and the knight's fee. Yet these circumstances were of a most powerful operation, both with respect to government and manners. I make not this remark to detract from the diligence of an author whose laboriousness is acknowledged, and whose total abstinence from all ideas and inventions of his own, permitted him to carry an undivided attention to other

men's thoughts and speculations ; but that, resting on these peculiarities, I may draw from them this general and humiliating, yet, I hope, not unuseful conclusion, that the study and knowledge of the dark ages are still in their infancy. Are we forever to revel in the sweets of antient lore ? And are we never to dig up the riches of the middle times ?

CHAP.

C H A P T E R IV.

(1) **A**MONG the disbursements from the Exchequer of the kings of England, there seems to have been much for the behoof of the knights of honour, whom they retained. This appears from a variety of records in *Madox*, and accounts for the high charges of the sheriffs for palfreys, saddles, gilt-spurs, peacocks-crests, silk toises, robes, gloves, steel-caps, swords, and lances. *Hist. of the Exchequer*, ch. 10.

A pension of L. 40 *per annum* was given by Edward III. to John Atte Lee, who had been invested with knighthood *in auxilium statu sui manutenendi*; and that Sir Nele Loring might better maintain the honour of knighthood, he granted to him, and his heirs male, L. 20 *per annum*. An annuity of forty marks was given to Sir John Walsh, by Richard II. to enable him to support this dignity. And other examples to this purpose are to be collected. *Ashmole on the Garter*, p. 34. See farther *Du Cange*, *voc. Mantes Regis, et Differt. 5. sur l'Historie de St. Louis.*

(2) Information concerning the knights retained by the nobles, is not to be found in that abundance which might be expected. In an account of the household expence of Thomas Earl of Leicester an. 1313, there are charged 70 pieces of blue cloth for his knights, and 28 for the esquires; 7 furs of powdered ermin, 7 hoods of purple, 395 furs of budge for the liveries of barons, knights, and clerks; 65 saffron-coloured cloths for the barons and knights; and 100 pieces of green silk for the knights. In this account, there is also a charge of L. 623 : 15 : 5, as fees to earls, barons, knights, and esquires. *Stow, Survey of London, in Strype's edition, vol. 1. p. 243.* The total expenditure of the Earl of Leicester for one year, which was 7309, is valued by Mr Anderson, at L. 21,927 of our money; and from the difference of living, or of the efficacy of money, his expence is made to be equal to L. 103,633. *Anderson, Hist. of Commerce, vol. 1. p. 153.* A board for the knights was one of the establishments of the fifth Earl of Northumberland. *Household-book, p. 310.* See farther, *St Palaye, tome 1. p. 312. 364.*

(3) 'In the nineteenth year of King Henry III.' says *Madox*, 'all the sheriffs of England were commanded, by close writs of the great seal, to make proclamation in their respective counties, that all they who held of the king in chief, one knight's fee or more, and were not yet knighted, should take arms and get themselves knighted, before the next Christmas, as they loved

‘loved the tenements or fees which they held of the king.’ *Baron. Angl.* p. 130. Proclamations of this kind were frequent.

(4) The writs to take knighthood expressed often, in their bottoms, the single knight’s fee, as the estate entitling to knighthood; and they are valuable as ascertaining, at different times, the value of the knight’s fee. Thus, there are rolls of different dates which state the knight’s fee at fifteen, twenty, thirty, forty, and fifty pounds of yearly valuation. A specification of such records may be seen in *Ashmole*, p. 33. and *Coke*, 11. *Institute*, p. 597. And, it is to be wished, that some intelligent person, who has access to the public offices, would publish a series of them. From such a work ingenious men might derive many advantages.

It is not to be conceived, that the knight’s fee which was held of a subject, could entitle to knighthood; and yet many learned writers have expressed themselves to this purpose. It was the knight’s fee *in capite*, or of the crown. This is illustrated by the writs of summons to take knighthood. And, of this writ, the record which follows, is an example, in the usual or regular form.

Rex Vicecomiti Norf. et Suff. salutem. Praecipimus tibi,
quod, visis literis istis, per totam balivam clamari facias, quod
omnes

omnes illi qui de nobis tenent in CAPIT^E feudum unius militis, vel plus, et milites non sunt, citra festum natalis Domini anno regni nostri decimo nono, arma capiant et se milites fieri faciant, sicut tenementa sua quae de nobis tenent diligunt. *Clas. 19. H. 3. m. 25. dorso. ap. Madox, Hist. of the Exchequer, vol. 1. p. 510.*

(5) In the reign of Henry III. the honour of Dudley, and other lands of Roger de Sumery, were taken into the king's possession, with all the chatels found on them ; because Roger did not come to be girt with the belt of knighthood. *Bar. Angl. p. 131.* For the same reason, the same prince seized the estates of Gilbert de Sampford and William de Montagu. And, in the twentieth year of Edward I. the sheriff of Kent was commissioned to seize the lands of such persons as did not appear to take knighthood, and to answer at the exchequer for the issues of them. *Hist. of the Exchequer, vol. 1. p. 510.*

The neglect of the sheriffs to distrain the lands of those who were entitled to knighthood, and refused it, was often to subject them in amerciaments and punishments. And, what is remarkable, it appears that the command of the King's writ to his officers was at times accompanied with much severity, in case they should be negligent of their duty, or be tempted to connivance by bribes. This is illustrated by the evidence of the following writ to the sheriff of Northamptonshire.

Rex Vicecom. North. salutem. Praecipimus tibi quod, sicut te ipsum et omnia tua diligis, omnes illos in baliva tua, qui habeant viginti libratas terrae, distringas, quod se milites faciendos curent, citra nativitatem Sancti Johannis Baptistae proxime futur. Sciturus pro certo, quod si, pro munere, vel aliqua occasione, aliquam relaxationem eis feceris, vel aliquem respectum dederis, nos ita graviter ad te capiemus, quod omnibus diebus vitae suae te senties esse gravatum. T. R. apud Wyndesor decimo quarto die Aprilis. *Clay. 28. H. 3. m. 12. dorso. ap. Ashmole, p. 33.*
See also *Coke*, 11. *Inst. p. 596.*

Thus, by a strange fate, chivalry was to grow into an imposition and a tax. It is a wild circumstance, and shows the unfortunate counsels, and the perverse humour of Charles I. that this unamiable method of raising money was revived in his reign. An act of tyrannical insolence was thus founded upon the pretext of an antient custom. Charles lived to abolish the oppression he had revived, and to ordain, that no person whatever should be compelled to take the order of knighthood, or to undergo any fine or trouble for not having taken it. *Stat. Car. I. an. 1640, cap. 20.*

(6) In the reign of Henry III. Bartholomew Fitz-William gave v marks to have respite for taking knighthood; and Thomas de Moleton, and several others, gave fines on the same account. *Hist. of the Exch. vol. 1. p. 509.* In the same reign,

Robert

Robert de Menevil paid v marks for a respite of knighthood for two years ; and Peter Fouden 48 shillings and 8 pence for the respite of three years. And, for a suspension from knighthood for the same period, John de Drokensford, in the days of Edward III. paid ten pounds. *Ashmole*, p. 33.

The refusing to take knighthood, when not punished by the seizure of the land, was subjected to fines and amerciaments, which seem to have been arbitrary. In the time of Edward III. William, the son of Gilbert de Alton, paid twenty shillings for not appearing and receiving knighthood, according to the command of the King's proclamation ; and the fine of forty shillings was set upon Simon de Bradeney, Thomas Trivet, and John de Neirvote. In the days of Henry IV. Thomas Pauncefoot paid four nobles for this neglect or contempt. *Ashmole*, p. 34. See farther *Baron. Angl.* p. 131. 132. *Camden, Introd. to the Britan.* p. 246. 247.

C H A P T E R V.

S E C T I O N I.

(1) ' **F**IT interdum,' says the old dialogue concerning the ex-
chequer, ' ut imminentे vel insurgente in regnum
hostium machinatione, decernat rex de singulis feodis militum
summam aliquam solvi, marcam scilicet, vel libram unam ; un-
de militibus stipendia vel donativa succedant. Mavult enim
princeps stipendiarios, quam domesticos bellicis apponere
casibus. Haec itaque summa, quia nomine scutorum solvitur,
'scutagium nuncupatur.' *Dial. de Scaccar. lib. 1. sc̄t. 9.*

It was according to the number of their fees that the barons and tenants *in capite* were charged with *scutage*. Each knight's fee paid a determined sum to the King. And, as the vassals of the crown were charged with the full payments for their fees, they had recourse for compensation to their knights, from whom they claimed a scutage in proportion to the fees held and pos-
sessed

seffed by each. The king applied to his vassals, and his vassals applied to their tenants.

(2) It is commonly conceived, on the authority of Alexander de Swereford, an accurate obfervor of records, that, in England, there was no *scutage* or tax on knight-fees before the reign of Henry II. There is great probability, however, that the scutage preceded the age of this prince. It is to be thought that it was coeval with the use of *mercenaries*; but the period of the introduction of these is not, I believe, to be ascertained with precision.

In the second year of the reign of Henry II. there was a scutage for the army of Wales. It was affessed only on the prelates who held their lands in knight-service. They paid at the rate of xx s. for each knight's fee. There was, in the fifth year of the same reign, a second scutage for the army of Wales; and it was affessed not only on the prelates, but on all the tenants by knight-service indiscriminately. They paid two marks for each knight's fee. In the thirty-third year of the same prince, there was a scutage for the army of Galway. It was xx s. *per* fee. Under Richard I. a scutage for Wales was affessed at c s. *per* fee. *Madox, hist of the Excheq. vol. 1. p. 620. et seq.*

I know that the first mode of taxation in England was not the tax on knight's fees, of which I now speak. In the Anglo-Saxon times,

times, Danegeld was an imposition on the landed property of England ; and it was established with the consent of the people in the wittenagemot or national council. The earlier Norman princes appear also to have levied this tribute ; but, in doing so, they probably exercised an illegal stretch of prerogative.

It was as mercenaries came to be employed, and as the spirit of the feudal institutions declined, that the scutage, or the tax on knight-fees, was to prevail. To this tax the *Magna Charta* gave a blow, which, in time, was to be decisive. The grant of money by the people succeeded to it. Subsidies, tenths, and fifteenths, were adopted, and continued long. The tax of Danegeld was only intended as a temporary expedient. The scutage led the way to a regular, a constant, and a formal method of taxation.

(3) Kennet, Collection of English Historians. Madox, Hist. of the Exchequer. Hume, History of England.

(4) It is an important circumstance, that the free gifts of cities and towns should have grown into taxes. In France, in the year 1231, the burgesses of S. Omer paid to S. Louis the sum of 1500 livres ; and this payment was called a *donum* ; a proof that it was not exigible as a duty. It is likewise evident, that, in France, such presents had been common, and had grown into taxes. *Brussel, Usage-general des Fiefs, liv. 2. ch. 32.*

In England, it is clear, from a variety of records produced or appealed to in *Madox*, that the word *donum* must also have been used to express gifts that were free. *Hist. of the Excheq.* *ch. 17.* After mercenaries were known, these gifts ceased to be free, and were termed *tallages*. And of tallages, both in England and France, there are frequent examples in the books I have just cited. See farther *Du Cange*, *voc. Donum*.

As Kings received gifts which they were to convert into tallages, so the lords and superiors, who were honoured with similar presents, did not fail to change them also into taxes or customs. *Du Cange*, *voc. Talliare*.

What is curious in a peculiar degree, the distant source of these usages, and the spirit of them too, while manners retained their simplicity, may be seen in the following words of *Tacitus*, of which this note may serve as an illustration. ‘*Mos est civitatis*’ *ultra et viritim conterre principibus vel armentorum vel frugum, quod pro honore acceptum, etiam necessitatibus subvenit.*’ *De Mor. Germ. c. 15.*

A distinction of great moment, as to civil liberty, deserves here to be remarked. During the pure times of the Gothic manners, the towns and boroughs made gifts at their own pleasure. When these manners were altered, they were tallaged at the pleasure

pleasure of the crown and the barons. The former times were times of liberty; the latter of oppression.

When Dr Brady, therefore, Mr Hume, and a multitude of writers, enlarge on the low and insignificant state of the towns, and, treating their inhabitants as little better than slaves, infer thence, the original despotism of our government, they are only active to betray their inattention. It is strange, that men of genius and talents, should take so lame a survey of this subject. Of the two states or conditions of society which prevailed, they have no conception. They knew only the history of towns in their last situation, and could not perceive that the oppressions they saw had only a reference to the change of manners, and the breaking down of the feudal system, which affected, indeed, the administrations of princes, and the conduct of the nobles to their vassals, but did not alter the established form of our government.

From the *Magna Charta*, these authors presume to date the commencement of our liberty; while that monument is a proof, the most indubitable, of the encroachments which had been made upon liberty, since it was its great purpose to destroy them.

(5) 'Nullum scutagium vel auxilium ponatur in regno nostro, nisi
' per commune consilium regni nostri, nisi ad corpus nostrum rediuen-
' dum, et ad primogenitum filium nostrum militem faciendum,
' et ad filiam nostram primogenitam semel maritandam; et ad
 ' hoc

‘ hoc non siet nisi rationabile auxilium.’ *Magna Charta, Reg. Joan. ap. Spelm. Cod. vet. p. 369.*

The *scutagium* was the tax on lands held in knight-service. The *auxilium* was any tax whatever. I am sensible, that, after the *Magna Charta*, there are instances of taxes which were levied without the concurrence of the great council of the nation; but these were violations of the constitution, and of liberty. For, from that period, the legal method of assisting government was by a parliamentary subsidy or assessment. The violent exactions of several princes, posterior to the *Magna Charta*, are, indeed, held out, by many authors, as descriptive of the despotism of our government. But of such authors, it is to be said, that they cannot distinguish our constitution from the administrations of our princes. The madness or the folly of a King may disfigure our government by wild, encroaching, and unhappy exertions; but from these we must infer nothing against those principles of liberty upon which it is founded.

(6) ‘Simili modo sicut de auxiliis de civitate Londinensi. Et ci-
‘ vitas Londinensis habeat omnes ANTIQUAS libertates, et liberas
‘ consuetudines suas, tam per terras quam per aquas. Praeterea
‘ volumus et concedimus, quod omnes aliae civitates, et burgi, et
‘ villae et barones de quinque portibus, et omnes portus habent
‘ omnes libertates et omnes liberas consuetudines suas, et ad haben-
‘ dum

‘dum commune consilium regni de auxiliis assidendis.’ *Mag. Chart. ap. Spelm. Col. vet. p. 369.*

The *Magna Charta* was explanatory of the *antient* law and custom, as well as corrective of abuses and tyranny. It is to be regretted, that, notwithstanding all which has been written concerning this invaluable record, there should yet, at this late hour, be desiderated a complete illustration of it. Much, I know, has already been executed towards this end ; but, if I am not greatly deceived, there remains still more to be done. And this, I imagine, will appear clearly to the philosophical reader, who will attend to it, in its connection with history, law, and manners.

SECTION II.

(1) **B**RUSSEL, Usage-general des Fiefs, liv. 2. ch. 6. Bacon, Discourse on the Government of England, part 1. p. 141. 264.

(2) Daniel, Milice Françoise, liv. 4. Hume, History of England, vol. 2. p. 85. Barrington, Observations on the more ancient statutes, p. 379.

(3) Bacon, Discourse on the Government of England, part 1. ch. 63. 71. Lord Lyttelton, Hist. of Henry II. vol. 3. p. 354.

(4) *Pere Daniel* mentions an array in France in the 1302, which called out 'tous les François nobles, et non nobles, de quelque condition qu'ils soient, qui auront âge de 18 ans et plus, jusqu'à l'âge de 60 ans.' He adds, 'Ce n'est pas à dire pour cela que tous marchassent en effet: Mais ceux que le roi commandoit pour faire ces levées, prenoient de chaque ville, et de chaque

‘ chaque bourg et village le nombre d’hommes, et telles hommes
 ‘ qu’ils jugeoient á propos en ces occasions.’ *Hist. de la Milice
 Françoise*, vol. 1. p. 57.

In England, ‘ in the sixteenth year of King Edward II. a
 ‘ commission issued out of the exchequer to Geoffrey de St Quyn-
 ‘ tyn and John de Kasthorp, ordering them to raise speedily, in
 ‘ every town and place in the wapentake of Dykeryng, as well
 ‘ within the franchises as without, all the defensible men that
 ‘ were between the age of sixteen and sixty, as well of gentz
 ‘ d’armes as of foot, each man being duly arrayed, according to
 ‘ his estate, and to put the said men in *array* by hundreds and
 ‘ twenties, and being so arrayed, to lead them to the King at York,
 ‘ by such a day, to aet against the Scots. The like commissions
 ‘ issued out of the exchequer, to John de Belkthorp and Geof-
 ‘ frey Stull, for the wapentake of Buckros, and to other persons,
 ‘ for other wapentakes.’ *Madox, Hist. of the Exchequer*, vol. 2.
 p. 111.

An example of an array, in the reign of Edward I. is also re-
 marked by *Mr Madox*, and it proceeded on writs from that
 prince to all the sheriffs of England *. It has been thought, that

D d d

King

* In his writ to each sheriff, after having ordered the *array*, and expressed his meaning, he subjoins these words. ‘ Et hoc, sicut indignationem nostram
 ‘ vitare et te indempnem servare volueris, nullatenus omittas.’ *Hist. of the
 Exchequer*, vol. 2. p. 104.

King John's reign afforded the first instance of an array. But I think it highly probable, that arrays were prior to his age. Mr Hume had met with no commission of array till the reign of Henry V. and this circumstance could not fail of leading him into mistakes. *Hist. of England*, vol. 2. p. 321.

Arrays for sailors were practised after the same method as for soldiers. The custom is still retained in *the pressing of seamen*. It is somewhat remarkable, that this illegal power is yet suffered to remain with the crown. If exerted as to soldiers, it would seem the highest tyranny. In apology for it, authors have said, that it is difficult to discover an expedient to answer its purposes, without greater danger to liberty.

(5) Daniel, *Hist. de la Milice Françoise*, liv. 3. ch. 8. Hume, *Hist. of England*, vol. 2. p. 224. Barrington, *Observations on the more antient Statutes*, p. 378. 380.

I am disposed to believe, that it was chiefly the enormous dissoluteness and irregularity of manners introduced by the mercenaries, which deformed England so much in the reign of Edward I. that the ordinary judges were thought unable to execute the laws. This, it would seem, made Edward invent a new tribunal of justice, which had power to traverse the kingdom, and to inflict discretionary punishments on offenders. *Spelman. Gloss. voc. Trailbaston.* Yet a court so inquisitorial was a daring insult to a free nation, and infinitely a greater calamity, than all the dis-
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ders which prevailed. That country is miserable where the discretion of a judge is the law.

(6) Daniel, Hist. de la Milice Françoise, liv. 4. The archers were called *frank*, because they were free from taxes.

(7) 3. Institute, p. 85. 87. Barrington on the more antient Statutes, p. 379. 380.

(8) Bacon, Discourse on the Government of England, part 1. p. 187. part 2. p. 60.

(9) 2. Institute, p. 3.

(10) Parl. an. 1. Hen. IV. de Deposit. Reg. Ricardi II. ap. Dec. Script. p. 2748.

(11) *Sir John Fortescue*, who resided some time in France with Prince Edward, the son of Henry VI. and who wrote there his excellent treatise, 'De Laudibus Legum Angliae,' describes, from actual knowledge, the exorbitant insolence of the French soldiery, and the miserable condition of the people. The picture he draws is too long for insertion in this place. But, though the features are strong, there is no reason to suspect the likeness. A native of Great Britain, in attending to it, must feel, in a lively degree, the happy advantages of our free constitution.

(12) 12. Charles II. cap. 24.

C H A P T E R VI.

(1) **T**ACITUS alludes to the historic songs of the old Germans, of which it was doubtless the purpose to record the migrations of tribes, and the exploits of chieftains. Of such songs, there were many in the eighth century ; and Charlemagne was fond of committing them to his memory. *Eginhart, Vit. Car. Magn. c. 29.* Of the celebrated Attila, it is said, that he had constantly his poets in waiting, and that their verses in honour of his exploits, were a part of the entertainment of his court. *Priycus, p. 67. 68.* In all rude times, the character of the bard is in repute, and attended with distinctions. This character was not peculiar to our ancestors, as some writers have fancied ; for we find it among the Greeks, and in other nations. It is peculiar to the early state of society, when the passions are warm, and language imperfect.

(2) It is a common notion, that the poets and Troubadours were only to be found in France and Italy. They were frequent, however, in all the countries of Europe ; and they hastened, by their rivalry, the progress of literature.

Henry

Henry III. had a poet or Troubadour in his service, on whom he bestowed a regular pension. This circumstance is to be gathered from the following record. ‘*Rex thesaurario et came-
rariis suis salutem. Liberate de thesauro nostro, dilecto nobis
Magistro Henrico versificatori centum solidos, qui ei debentur
de arreragiis stipendiorum suorum. Et hoc sine dilatione et
difficultate faciatis, licet scaccarium sit clausum. T. R. apud
Wodstoke xiiij die Julii.*’ 35. *H. 3. ap. Madox, Hist. of the
Excheq. vol. 1. p. 391.*

There is a commission of Henry VI. *De Ministrallis propter
solatium regis providendis*, from which it is to be gathered, that the recitation or chaunting of songs, was an amusement in repute and fashion. *Rymer, 34. Henry VI.* The fifth Earl of Northumberland had his minstrels and players ; and it was a qualification of his almoner, that he was ‘a maker of interludes.’ *Household-book, p. 44. 85. 93. 331. 339.* The reader may consult farther on this subject, an author, who is not more distinguished by the soundness of his knowledge, than by the classical simplicity of his language, Mr *Warton*, in his history of English poetry.

(3) *Histoire Litteraire des Troubadours*, par M. l’Abbé Millet.

(4) It

(4) It is to be observed, that it was the married women chiefly who vied in the merits of their poets and Troubadours. An interesting figure, as well as the talent of rhyming, was necessary to the Troubadour ; and it was his constant aim to gain the heart or the person of his patroness. Perhaps it would be to refine too much, if one should consider the present infidelity of the married women in France, as a relict of this usage, and the corruptions of chivalry.

Of the Duke of Orleans, the brother of Charles VI. there is a pleasant notice in Brantome, which illustrates very aptly the profligate manners introduced by fiefs and chivalry. ‘ C’etoit ‘ un grand debaucheur de dames de la cour, et des plus grandes : ‘ Un matin en ayant une couchée avec lui dont le mari vint par ‘ hazard pour lui donner le bon jour, il cacha la tête de cette ‘ dame, et lui découvrit tout le corps, la faissant voir et toucher ‘ nue à ce mari à son bel aise, avec défense sous peine de la vie ‘ d’oter le linge du visage . . . Et le bon fut que le mari étant ‘ la nuit d’après couché avec sa femme, lui dit que M. d’Orleans ‘ lui avoit fait voir la plus belle femme nue qu’il eut jamais ‘ vue ; mais, quant au visage, qu’il n’en scavoit que dire, ayant ‘ toujours été caché sous le linge.’ It is added, ‘ De ce petit ‘ commerce, sortit ce brave et vaillant lâtant d’Orleans, Comte ‘ de Dunois, le soutien de la France et le fleau des Anglois.’ *Brantome, ap. St. Foix, Ess. històr. vol. 1. 319.*

(5) See,

(5) See, in Ste Palaye, le voeu du Paon ou du Faisan, et les Honneurs de la Cour.

(6) Histoire des Troubadours, tom. 1. p. 11.

(7) This invention is ascribed to William the ninth Earl of Poitou. ‘Ce fut un valeureux et courtois chevalier, mais grand ‘trompeur de dames.’ *Hist. des Troub.* tom. 1. p. 4. 7.

(8) Le Moine de Fossan, a Troubadour, composed a song, in which he thus speaks of the *Virgin*. ‘Je suis devant elle à ‘genoux, les mains jointes, comme son tres humble esclave, ‘plein d’ardeur dans l’attente de ses regards amoureux, et d’ad- ‘miration dans la contemplation de son beau corps et de ses ‘agreables manieres.’ *Hist. des Troub.* tom. 2. p. 225.

(9) Deudes de Prades, a troubadour, has this sentiment: ‘Je ‘ne voudrois pas être en Paradis, à condition de ne point aimer ‘celle que j’adore.’ *Hist. de Troub.* tom. 1. p. 321.

(10) It was said wittily, but not without reason, by the Troubadour Rainond de Castelnau: ‘Si Dieu fauve pour bien man- ‘ger et avoir des femmes, les moines noirs, les moines blancs, ‘les Templiers, les Hospitalieres, et les Chanoines auront le Pa- ‘radis; et Saint Pierre et Saint André sont bien dupes d’avoir ‘tant

‘tant souffert de tourmens, pour un paradis qui coute si peu aux autres.’ *Hist. des Troub.* tome 3. p. 78.

It was in consequence of the depraved manners of the clergy, that, in England, the personage who, in the season of Christmas festivity, was to preside in the houses of the nobility over riotous mirth and indecent indulgencies, was termed ‘the abbot of misrule.’ This character appears in the establishment of the fifth Earl of Northumberland, an. 1512. *Household-book*, p. 344. See also *Dr Percy’s* notes to this record.

In Scotland, the same character or personage seems to have been still more common, and even so familiar in the lowest ranks of civil life, that he grew to be a nuisance in towns and boroughs. His appellation there was, ‘the abbot of unreason;’ and, when the severity and starchness of the reformation soured and deformed this country with the hypocritical preciseness, and the dismal formality which have not yet left it, an act of parliament was thought expedient to suppress and abolish an office so highly licentious and profane. 6. *Parl. Mary* 1555.

(11) Giannone, History of Naples, vol. 1. p. 283. 446. Menezay, *Moeurs de l’Eglise du xi. siecle.* Du Cange and Spelman, voc. *Focaria.* *Ste Palaye sur l’anc. cheval.* partie 5.

(12) Joinville, *Histoire de S. Louis*, p. 32.

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(13) ‘Si

(13) ‘Si quis dixerit *conjugi*, malam licentiam dando, *vade et concumbe cum tali homine*; aut si dixerit alicui homini, *veni et fac cum muliere mea et nis commixtionem*; et tale malum factum fuerit, et caussa probata fuerit, quod per ipsum maritum factum sit, ita statuimus, ut illa mulier, quae hoc malum fecerit et consenserit, moriatur, secundum anterius edictum; quia nec talam caussam facere, nec celare debuit.’ *Leg. Longobard.* p. 1096. *ap. Georgisch, Corp. Jur. Germ. Antiq.*

This law evinces the antiquity and the heinousness of the practice alluded to; but, in posterior times, the fashion was thought of more lightly, and too prevalent to be punished with severity. See some curious information in *Du Cange*, *voc. Cugus, Cucucia, Licentia Mala, Uxorare.*

(14) The *Gynaeceum*, by which the apartment was expressed where the women were kept to work at the needle, and other domestic employments, came to signify a brothel, or place of debauch, from the use that was made of it. *Du Cange*, *voc. Gynaeceum*. Over the doors of a palace which belonged to Cardinal Woolsey, there was written, *Domus Meretricum Domini Cardinalis*. It has been said, indeed, that *Meretrices* stood of old for *Latrices*; and the advocates for the chastity of the Cardinal contend, of consequence, that this inscription only served to direct to his *laundry*. But, I am afraid, that this plea will not hold. For the terms were convertible; and the women who
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acted in the laundry, and who were employed in working in linen and tapestry, were in general the convenient mistresses, to whom their lords paid a temporary worship. It was from some mistakes of this sort, that, in the reign of Elizabeth, there was an order, that no *laundresses*, nor women called *virtuallers*, should come into the gentlemens chambers of Gray's Inn, 'unless they 'were full *forty* years of age.' *Dugdale, Orig. Jurid.* p. 286.

(15) Ranulph. de Hengham, *Summa Magna*, cap. 2. and Selden's notes to it.

(16) In the *Britannia*, in the description of Surrey, there is this notice. 'Hamo de Catton held Catteshull-manour by be-
'ing *Marshal of the whores* when the King should come into
'these parts.' *Camden, vol. 1. p. 181.* In the reign of Edward II. Thomas de Warblynton held the manor of Shirefeld in Hampshire, of the King in chief, by the ferjeanty of being *Marshal of the whores* in the King's household, and of dismembering malefactors condemned, and of measuring the galons and bushels in the King's household. The words of the record are,
'Tenuit in capite, die quo obiit de Domino E. nuper rege An-
'gliae patre regis nunc, per sargantiam effendi *Marescallus de*
'*meretricibus in hospitio regis*, et dismembrare malefactores ad-
'judicatos, et mensurare galones et bussellos in hospitio regis.'
Fas. Fines 1. Edw. III. Rot. 8. a. ap. Bar. Angl. p. 242.

(17) The vassal forfeited his estate in the following cases:
'Si dominum cucurbitaverit (id est, uxorem ejus stupraverit,) vel turpiter cum ea luserit. Si cum filia domini concubuerit, vel nepte ex filio, vel cum nupta filio, vel cum forore domini sui *in capillo*, id est, in domo sua manente.' *Lib. Feud. ap. Spelman Gloss. voc. Felonia.*

The words *in capillo*, allude to a peculiarity in the Germanic and Gothic manners, which deserves to be explained. All virgins wore their hair uncovered, and with ornaments. Married women concealed their hair, and covered their heads. The ornaments for the hair were many. And, in the progress of time, it was not the hair of their heads only, that the women were curious to deck out. The mother of the fair Gabrielle being assassinated, her body lay, for many hours, exposed, in a public manner, to the spectator, and in a posture so exceedingly *indecent*, that it discovered a strange mode or affection. In this last fashion, which was probably introduced in the decline of chivalry, the ornaments were ribands of different colours; and, it seems to have been peculiar to women of rank and condition. *St Foix, Eff. Hist. vol. 4. p. 82.*

In general, it merits remark, that the veneration for their hair entertained by the Germans and their posterity, was very great, and gave rise to a multitude of customs. It was a mark of refined attention in a person to present a lock of his hair to a friend

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on saluting him ; it was to say, that he was as much devoted to him as his slave. To take away the hair of a conspirator, was one of the most afflicting parts of his punishment. To give a slave the permission of allowing his hair to grow, was to offer him his freedom. *Du Cange and Spelman, voc. Capilli.* William Earl of Warrene, in the age of Henry III. granted and confirmed to the church of St Pancrace of Lewes, certain land, rent, and tithe, and gave seisine of them ‘ *per capillos capitis sui, et fratri sui Radulfi de Warr. quos abscidit de capitibus suis cum cultello ante altare.*’ *Mag. rot. 24. Henry III. ap. Madox. Hist. of the Excheq. Prefatory Epist. p. 30.* This must have been a compliment in the highest style of flattery ; and the clergy of St Pancrace must have been enchanted with the politeness of this nobleman.

There seems something wild and romantic in such usages ; yet they produced the locket and the hair-ring of modern times ; and we smile not, nor are surprised, that these should teach us to employ our moments of softness in melancholy recollections of absent beauty, or departed friendship. What is distant and remote, affects us with its ridicule. What is present and in practice, escapes our censure. In the one instance, we act with the impartiality of philosophers ; in the other, we are carried away by our passions and our habitudes.

(18) St Foix, Est. Histor. vol. 1. p. 102. Stow, Survey of London, in the Edition of Strype, vol. 2. p. 7.

(19) There is evidence of public or licensed stews in England in *Stat. 2. Henry VI. cap. 1.* in *Cowel, voc. Stews, Spelman, voc. Stuba, and in Coke, 3. Institute, ch. 98.* Henry II. gave his privilege to the stew-houses of Southwark, according to the 'old customs which had been used there time out of mind.' And patents confirming their liberties were granted by other princes. *Stow, in Strype's edit. vol. 2. p. 7.* In Normandy, there was a *custos meretricum*; and this officer seems to have been known in the different countries of Europe. *Du Cange, voc. Custos meretricum, et Panagator.*

It has frequently been a subject of inquiry among politicians, whether public stews, under proper regulations, with a view to the health of individuals, and the peace of society, be not an advantageous institution. In some states of Europe, a tolerated or authorized prostitution is known at this day. And, by the Code of Gentoo laws, this institution was acknowledged as salutary; and prostitutes forming a community were, in Hindostan, an object of care to the government. I avoid, however, to enter into a question of such infinite delicacy. It is dangerous in a state to give the slightest stab to morality. Yet, I cannot but observe, that, in the most cultivated nations, there are laws and regulations which wound

wound morality more severely than could be done by an authorized prostitution, and with less of utility to mankind.

(20) The licensed stew-houses in the reign of Henry VII, were the Boar's-head, the Crofs-keys, the Gun, the Castle, the Crane, the Cardinal's-hat, the Bell, the Swan, &c. *Sir Edward Coke* has preserved this information, 3. *Institute*, p. 205. In the time of Edward VI. Bishop Latimer complained and preached to the following tenor. 'There is more open whoredom, more 'stued whoredom, than ever was before. For God's sake, let it 'be lookt to.' *Stow*, in *Strype's edit.* vol. 2. p. 8.

(21) 3. *Institute*, p. 206.

(22) Spelman voc. Stuba, 3. *Institute*, p. 205.

C O N C L U S I O N.

I Presume not to think that I have exhausted the topics I treat in this volume. For, what subject does not stretch to infinity? But it has been my particular care to go back to the sources, and to express the beginnings of law, government, and manners; and I have been solicitous to open up, with a due advantage, the original ideas, which I have ventured to strike out, and which, perchance, may attract the notice of the ingenious and the learned. Yet, when I consider what many great men have written before me concerning human affairs, I know not, whether it ought to flatter my pride, or to fill me with shame, that I, too, have yielded to my reflections and my sentiments; and, though in the obscurity of a private station, and in the fervour of youth, have presented to my fellow-citizens this aspiring fruit of my studies and ambition.

A P P E N D I X.

A P P E N D I X.

No. I. P. 224.

ARTICLE I. *Charta Dotis quam Folradus constituit Helegrinae Sponjae filiae.*

FIN Dei nomine. Dulcissima sponsa mea Helegrina. Ego enim Folradus filius quondam Eriperti ex genere Francorum, et modo habitator sum in pago Pinnensi. Dum non est incognitum qualiter per voluntatem Dei vel parentum quondam tuorum te desponsavi et carnali conjugio sociari dispono, propterea dono tibi He. sponsa mea in honore pulchritudinis tuae in die nuptiali dotem dignam atque aptam, hoc est, mansos meos infra vicum Pinnensem, qui mihi pertinet et ex comparatione evenit et data mea pecunia comparavi. Trado tibi ipsos mansos cum omni integritate sua et domum dignam ad commanendum exquisitam casam unam constratam, cum omnibus utensilibus et vaies, cum omnibus adjacentiis ad ipsos mantos aspicientibus vel pertinentibus, cum terris et vineis, pomis, cum omnibus quae

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super se habentur vel ad ipsam curtem de Vico pertinent, et quae habere visus sum, vel inantea Deo adjuvante ibidem parare vel conquerire potuero, in integrum ista omnia superius comprehensa, si nos Deus carnali conjugio sociari voluerit, in die nuptiali tibi dono, tradō, atque transcribo ad possidendum, ut quicquid exinde facere volueris, liberam et firmissimam in omnibus habeas potestatem. Si quis vero, quod futurum esse non credo, fuerit in postmodum ego aut aliquis de heredibus meis, seu quaelibet ulla opposita persona contra hanc cartulam libellum dotis venire tentaverit, aut eam frangere voluerit, primitus iram Dei incurrat, et insuper una cum socio fisco aurum libram unam, argentum pondera duo mulctam componat, et quod repetit non vendicet, sed haec cartula libellum dotis omni tempore firma et stabilis permaneat, cum stipulatione subnixa. Unde pro stabilitate vestra Audoaldum Notarium scribere rogavimus. Actum in Vico anno regni et imperii Domini Ludovici xxx. et primo anno Supponis Comitis, die viii. mensis Junii, Indictione v. Signum Folradi, qui hunc libellum dotis fieri rogavit. Lioto, Mafolus, Aloini, testes. *An. 827. Ex. Chartulario Monasterii Cavauriensis, ap. Baluz. Capit. Reg. Franc. vol. 2. p. 1427.*

ART. II. *A reciprocal Grant. Roger Pit and his Wife grant and release to the Priour of Brummore a Tenement held in Dower; and the Priour grants a yearly Rent for the Life of the Wife.*

SCIANT praesentes et futuri, quod haec est carta Cyrographata, anno ab Incarnatione Domini Millesimo CCXLIII facta, inter Dominum S. Priorem et Conventum de Brummore ex una parte, et Rogerum de la Putte et Editham uxorem suam ex altera. Scilicet, quod praedi^umus Rogerus et Editha uxor sua, trahiderunt, et concesserunt, et quietum clamaverunt, ad vitam ipsorum, totum tenementum quod dictae Edithae evenit in dotem, de Hugone Fichel, in villa de Brummore, cum omnibus pertinentiis. Et dicti Prior et Conventus tenentur reddere, singulis annis, ad festum S. Michaelis, tres sol. et VI denar. dictis Rogeru et Edithae uxori suae, quamdiu ipsa vixerit. Si vero, quod absit, praedi^uti Prior et Conventus dictum redditum, scilicet II sol. et VI den. prae notato termino non solverint praefictis R et E uxori suae, licebit tenementum suum disstringere, donec fuerit eis satisfactum. Tenentur etiam acquietare dictum Rogerum et E uxorem suam, de omnibus scelis tam coitatus quam Hundredi, et omnium aliarum Curiarum, et de omnibus taillagiis tam Regalibus quam aliis, dicto tenemento spectantibus. Hanc Conventionem fideliter et sine dolo tenendam, ex utraque parte assidaverunt. Et ad majorem securitatem faciendam, alterno scripto sigilla sua apposuerunt. His testibus, Ric. de Burle,

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Johanne

*Johanne Baldwin, Johanne de Brummore, Rocelino de Burle,
Hugone de Lapolot, Philippo le Champiun; et multis aliis. Ap.
Madox, Formulare Anglicanum, p. 84.*

ART. III. *A Release of a yearly Rent in Dower.*

OMNIBUS Christi fidelibus ad quos praesens scriptum pervernerit, *Nicholaa quae fui uxor Willelmi de Nafford in Bereford* salutem in Domino. Noveritis me in pura et legitima viduacitate mea, relaxasse et omnino pro me et haeredibus meis vel assignatis quietum clamasse Domino *Fulconi de Lucy* Militi, et haeredibus suis vel assignatis, totum Jus et clameum quod habui vel aliquo modo habere potui, in tribus solidatis redditus quos ab eodem Domino *Fulcone* recipere solebam nomine Dotis meae per annum, ad festum Sancti Michaelis, de tenemento quod *Johannes de Merehull* tenuit in *Bereford*; Ita quod nec ego nec haeredes mei vel assignati, nec aliquis nomine meo, aliquid juris vel clamii a praefato Domino *Fulcone* et haeredibus suis vel assignatis, occasione dictorum trium solidorum redditus, decaetero exigere vel vendicare poterimus. In cuius rei testimonium, praefenti scripto Sigillum meum apposui. Datum *Berefordiae* die *Lunae in Crastino S. Mariae Magdelenae*, Anno regni Regis *Edwardi* decimo nono. *Ap. Formulare Anglicanum, p. 381.*

No. II. P. 239.

ART. I. *A Feoffment in Frankmarriage of Land, a Capital Mansion, &c. made to a Man with the Daughter of the Feoffer.*

SCIANT omnes tam praesentes quam futuri, quod ego *Petrus de Poketorp* dedi et concessi, et hac mea praesenti carta confirmavi, *Herveio filio Willelmi filii Jole*, in Maritagio cum *Matilda* filia mea, duas bovatas terrae in *Snape*, cum pertinentiis; illas scilicet quae sunt remociores a Sole, in dimidia carucata terrae quam *Robertus filius Radulsi* michi dedit pro Humagio et Servicio meo; Et capitalem Mansuram meam in eadem villa; Et gardinum meum ultra aquam; et pratum meum apud *Sutham Kelde*; Et praeterea apud *Joles Croft* tres acras terrae et dimidiad; Illi et haeredibus qui de praedicta filia mea exhibunt: Tenendum de me et de haeredibus meis in feudo et haereditate, libere, et quiete: Faciendo forinsecum servicium, quantum pertinet duabus bovatis terrae in feudo quo duodecim carucatae terrae faciunt feudum unius Militis. Et ex incremento dedi ei servicium duarum bovatarum terrae in *Torneton Watlous*, quas *Herveius de Norfolke* de me tenuit, et quas *Tomas de Torneton et Beatricia Sponia* sua michi pro Humagio et Servicio meo dererunt. Hiis testibus (viz. *Seven Persons*) et multis aliis. *Ap. Formulare Anglicanum, p. 79.*

ART.

ART. II. *A Feoffment, or Gift of Land in Frankmarriage with the Sister of the Donor.*

SCIANT tam praesentes quam futuri, quod ego *Ricardus Takel de Burnham*, cum assensu *Miruldae* uxoris meae, et *Galfridi* mei filii et haeredis mei, dedi et concessi, et praesenti carta mea confirmavi, *Galfrido* filio *Johannis de Haxai*, cum *Alicia* sorore mea, in libero maritagio, totam terram quam habui arabilem et in prato in *Blespit*; illi scilicet et haeredibus suis, tenendam de me et haeredibus meis, libere, solide, et quiete: Reddendo inde annuatim mihi et haeredibus meis, pro omni servicio et exactione saeculari ad nos pertinente, *iiiij^{or}* denarios ad duos terminos, scilicet duos denar. ad festum *Omnium Sanctorum*, et duos denar. ad Purificacionem beatae Mariae. Et ego et haeredes mei, praedictam terram illi et haeredibus suis, pro praedicto servicio, contra omnes homines warantizabimus in perpetuum. Hiis testibus, *Roberto Takel de Burnham*, *Galfrido de Burnham*, *Roberto de Burnham*, *Roberto Norrais*, *Gregorio ad Aulam*, *Samjone de Landelles*, *Elid Capellano*; et multis aliis. *Ap. Formulare Anglicanum*, p. 81.

N^o. III. P. 254.

ART. I. *A Grant of Privilege and Protection from King Edward to the Abbey of Bury St. Edmund.*

EADWEARDUS Rex salutem mitto meis Episcopis et meis Comitibus, et omnibus Theinis meis qui sunt in Sciris ubi Sanctus Eadmundus habet Terras, benevole. Et vobis significo, quod volo ut *Leofstannus* Abbas et omnes Fratres in *Eadmundi burgo* Saca et Socna sua libere potiantur de omnibus suis propriis hominibus, tam intra Burgum quam extra. Et nolo pati ut quicquam eis ullam injuriam inferat. *Ap. Form. Anglic.* p. 290.

ART. II. *A Mandate of Protection from King Henry the Second for the Abbey of Battell.*

H. DEI gratia Rex *Angliae*, et Dux *Normanniae* et *Aquitiae*, et Comes *Andegaviae*, Justiciariis, Vicecomitibus, et omnibus Ministris suis *Angliae*, in quorum baillivis Abbas et Monachi de *Bello* habent terras, salutein. Praecipio vobis, quod custodiatis et manuteneatis et protegatis Abbatiam de *Bello* et Monachos

nachos ibidem Deo servientes, et terras et omnes res et possessio-nes suas, sicut meas proprias ; ne quis eis injuriam faciat vel con-tumeliam ; Et non vexetis eos, nec injuriam aliquam eis faciat nec fieri permittatis, exigendo ab eis consuetudines vel servitia quae Cartae meae et Antecessorum meorum testantur quod fa-cere non debent ; Et si quis eis injuriam intulerit, contra liberta-tes et consuetudines quas Cartae suae testantur quod habere de-bent, eam ipsis sine dilatione emendari faciat. Teste *Ricardo* Episcopo *Wintoniensi* apud *Lutegareſball*. *Ap. Form. Anglic.* p. 296.

ART. III. *Fines made to Kings, that they would remit their Resentments and Indignation.*

OSBERTUS de Lerec. debet cc marcas argenti, ut Rex par-donaret ei et Osberto Clerico suo malivolentiam suam. *Mag. Rot. 5. Steph.*

Tomas Clericus de Camera debet ij palefridos pro Roberto Capellano, ut Rex perdonaret eidem Roberto, malivolentiam su-am, quia comedit cum praediō Toma apud Corf. *Mag. Rot. 6. Job.*

Galfidus de Insula debet quater **xxxv** marcas, ut Rex remit-tat indignationem. *Ex. Memor. 31. Henr. 3. Rot. 10. Will-elmus*

elmus de Ros debet c marcas, ut Rex remittat indignationem.

Ib. Rot. 11. Madox, Hist. of the Exchequer, vol. 1. p. 472—476.

ART. IV. *Fines for Favour, and Protection.*

GILEBERTUS filius Fergasi debet DCCCC et xix l. et ix s.
pro habenda benevolentia Regis. *Mag. Rot. 26. H. 2. Rot. 4.*

Radulfus Murdac debet L l. and viij s. and viij d. pro habendo
amore regis Ricardi. *Mag. Rot. 11. J. Rot. 14.*

Decanus et capitulum Londoniae debent ij palefridos, pro pro-
tectione, nec vexentur contra libertates cartarum suarum. *Mag.*
Rot. 2. J. Rot. 11. Hist. of Excheq. ch. 13.

G g g

No.

N^o. IV. P. 262.

An Accord or Truce between the Earl Marshall, and the Earl of Gloucester, and their Men, under Reciprocal Oath.

SCIENT hoc scriptum visuri, quod cum die *Dominica* proxima ante *Cathedram Sancti Petri*, Inter Dominum *R. de Clifford* ex parte Comitis *Marescalli*, Et Dominum *Ricardum Basset* et *Martini Hostiarium*, ex parte Comitis *Glocestriae*, super quibusdam excessibus tractatus haberetur; Tandem inter eos sic convenit. Videlicet quod Homines dictorum Comitum, fidelem et firmam Treugam ex utraque parte, a dicta die *Dominica* usque in sexdecim dies proximo sequentes inviolabiliter observabunt. Et Dominus *R. de Clyfford*, die *Lunae* proximo post dictum Festum, ad Comitem *Glocestriae* apud *Cirencestriam* accedet, ad formandam pacem inter praedictos Comites. Et si alter eorum tunc venire nequiverit, hoc alteri parti die *Veneris* proximo praecedente vel die *Sabbati*, scilicet Comiti *Glocestriae* apud *Fayreford*, vel Domino *Rogero de Clyfford* apud *Suttun* juxta *Banneluriam* denuncietur. Ad hoc si *Morgan* filius *Hoel* dictam Treugam pro se et Hominibus suis tenere voluerit, recipiatur in ipsam; Quod si noluerit, tunc durantibus Treugis habitabit in montanis, nec in aliquod Castrum vel Burgum ipse vel sui interim

terim admittentur. Haec autem firmiter, et absque dolo, et omni cavillatione, Dominus *R. de Clyfford* et *W. de Lucy* ex parte Comitis *Mariscalli*, et Dominus *R. Basset* et *M. Hostiarius* pro Comite *Gloucesteriaco*, affidaverunt. In hujus autem rei testimonium, praefens scriptum in modum Cirograffi est compositum; Cujus una pars, Sigillis dicti *R. de Clyfford* et *W. de Lucy* signata, dictis *R. Basset* et *M.* est commissa, Reliqua vero parte, singnis dicti *R. Basset* et *M.* signata, penes *R. de Clyfford* remanente. *Ap. Form. Anglic. p. 84.*

No. V. P. 282.

ART. I. *An Injunction not to tourney by Henry III.*

RE X Comitibus, Baronibus, Militibus, et omnibus aliis, ad instantem diem Jovis in vigilia Beati Martini, seu aliis diebus apud Warrewicum, ad torneandum ibidem conventuris, salute. Mandamus vobis, in fide, homagio et dilectione, quibus nobis tenemini, firmiter injungentes, et sub poena amissionis terrarum et tenementorum et omnium bonorum vestrorum, quae in regno nostro habetis, districte inhibentes, ne ibi vel alibi in eodem regno nostro tourneare, justas facere, aventure quacrerere, seu alio modo ad arma ire, praesumatis, sine Licentia nostra speciali. Scituri, quod si secus egeritis, nos terras, tenementa et omnia bona vestra in manum nostram capiemus, et ea retinebimus tanquam nobis forisfacta. In cuius, &c. T. Rege apud Westmon. iii die Novembris. Pat. 57. Hen. 3. m. 1. Apud Madox, *Baronia Anglica*, p. 283.

ART.

ART. II. *A Prohibition of Torneaments by Edward III.*

REX Vicecomiti Lincolniae salutem. Praecipimus tibi, firmiter injungentes, quod statim visis praesentibus, per totam ballivam tuam, in Civitatibus, Burgis, et locis aliis quibus melius videris expedire, publice proclamari, et districte ex parte nostra facias inhiberi, nequi sub forisfactura vitae et membrorum, terrarum et tenementorum, bonorum et catallorum suorum, ac omnium illorum quae nobis forisfacere poterunt, torneamenta, justas aut burdeicias facere, seu aliter infra ballivam tuam ad arma ire praesumant, set se praeparent quanto potentius poterunt, ad proficendum nobiscum in obsequium nostrum ad partes Scociae, ad rebellionem et nequiciam quorundam Scotorum rebellium et proditorum nostrorum, jam contra nos prodicinaliter insurgen-
cium, viriliter, cum Deo et ipsorum adjutorio, reprimendam ; Ita quod omnes homines ad arma de balliva tua, quilibet videlicet juxta exigenciam Status sui, sint ad nos cum equis et armis apud Karliolum, in quindena Nativitatis Sancti Johannis Bap-
tistae proximo futura ad ultimum, ad apponendum una nobiscum, et cum confiabilibus fidelibus nostris, quos tunc nobiscum ibidem adesse contigerit, super negotiis statum terrae nostrae Sco-
ciae tangentibus, prout nobis Altissimus duxerit inspirandum consilium et juvamen. Praecipimus eciam tibi, quod si qui vel quis torneamenta, justas, aut burdeicias, contra hanc inhibi-
tionem

tionem nostram, infra ballivam tuam facere, seu aliter ad arma
ire praesumant vel praesummat, tunc corpora ipsorum vel ipsius,
quos vel quem delinquentes vel delinquentem inveneris in hac
parte, sine dilatione capias, et in prifona nostra salvo custodias,
donec aliud inde praeceperimus. Et nos de hiis quae facienda
duxeris in praemissis, in crastino Sanctae Trinitatis proximo futu-
ro reddas distincte et aperte certiores, hoc breve nobis remitten-
tes. T. Rege apud Wolveseye vi die Aprilis.

Eodem modo mandatum est singulis Vicecomitibus Angliae.
Clauſ. 34. Edw. 3. m. 16. dorſo. Ap. Baron. Anglic. p. 289.

No.

No. VI. p. 298.

The Order and Manner of creating Knights of the Bath in the Time of Peace, according to the Custom of England *.

1. **W**HEN an esquire comes to court, to receive the order of knighthood, in the time of peace, according to the custom of England, he shall be honourably received by the officers of the court; *sc.* the steward or the chamberlain, if they be present, but otherwise by the marshalls and ushers. Then there shall be provided two esquires of honour, grave, and well seen in courtship and nurture, as also in the feats of chivalrie,

* This narrative is a translation of an old tract in French, which was first published by Edward Byshe, Esq; in his learned notes to Upton de Studio Militari, p. 21.—24. Sir William Dugdale took the trouble to turn it into English, in his antiquities of Warwickshire, vol. 2. p. 708.—710. Both in Byshe and in Dugdale this narrative is illustrated by figures, delineated from a book in which they were drawn in colours, in the time of Edward IV. Pere Daniel holds it as expressive of the ceremonies used in France; and, it is to be thought, that they were universal over Europe. The original French, of which the naiveté of the style has been observed, is to be found both in Upton and P. Daniel. Of the ceremonies, the fantastickness and levity are not more remarkable, than the important seriousness with which they were performed.

valrie, and they shall be esquires, and governours in all things relating to him, which shall take the order aforesaid.

2. And if the esquire do come before dinner, he shall carry up one dish of the first course to the king's table.

3. And after this the esquire's governours shall conduct the esquire, that is to receive the order, into his chamber, without any more being seen that day.

4. And in the evening the esquire's governours shall send for the barbour, and they shall make ready a bath, handsomely hung with linen, both within and without the vessel, taking care that it be covered with tapistrie and blankets, in respect of the coldness of the night. And then shall the esquire be shaven, and his hair cut round. After which the esquire's governours shall go to the king, and say, *Sir, it is now in the evening, and the esquire is fitted for the bath when you please*: Whereupon the king shall command his chamberlain that he shall take along with him unto the esquire's chamber, the most gentle and grave knights that are present, to inform, counsel, and instruct him touching the order, and feats of chivalrie: And, in like manner, that the other esquires of the household, with the minstrells, shall proceed before the knights, singing, dancing, and sporting, even to the chamber door of the said esquire.

5. And when the esquire's governours shall hear the noise of the minstrells, they shall undress the said esquire, and put him naked into the bath: But, at the entrance into the chamber, the esquire's governours shall cause the music to cease, and the esquires also for a while. And this being done, the grave knights shall enter into the chamber without making any noise, and, doing reverence to each other, shall consider which of themselves it shall be that is to instruct the esquire in the order and course of the bath. And when they are agreed, then shall the chief of them go to the bath, and, kneeling down before it, say, with a soft voice: *Sir! be this bath of great honour to you;* and then he shall declare unto him the feats of the order, as far as he can, putting part of the water of the bath upon the shoulder of the esquire; and having so done, take his leave. And the esquire's governours shall attend at the sides of the bath, and so likewise the other knights, the one after the other, till all be done.

6. Then shall these knights go out of the chamber for a while; and the esquire's governours shall take the esquire out of the bath, and help him to his bed, there to continue till his body be dry; which bed shall be plain and without curtains. And as soon as he is dry, they shall help him out of bed, they shall cloath him very warm, in respect of the cold of the night; and over his inner garments shall put on a robe of russet, with long sleives, having a hood thereto, like unto that of an hermite. And the esquire being out of the bath, the barbour shall take away

the bath, with whatsoever appertaineth thereto, both within and without, for his fee ; and likewise for the collar (about his neck) be he earl, baron, baneret, or batcheler, according to the custom of the court.

7. And then shall the esquire's governours open the dore of the chamber, and shall cause the antient and grave knights to enter, to conduce the esquire to the chapell : And when they are come in, the esquires, sporting and dancing, shall go before the esquire, with the minstrells, making melodie to the chapell.

8. And being entered the chapell, there shall be wine and spices ready to give to the knights and esquires. And then the esquire's governours shall bring the said knights before the esquire to take their leave of him ; and he shall give them thanks all together, for the pains, favour, and courtesie which they have done him ; and this being performed, they shall depart out of the chapell.

9. Then shall the esquire's governours shut the dore of the chapell, none staying therein except themselves, the priest, the chandler, and the watch. And, in this manner shall the esquire stay in the chapell all night, till it be day, bestowing himself in orisons and prayers, befeeching Almighty God, and his blessed mother, that, of their good grace, they will give him ability to receive this high temporal dignitie, to the honour, praise, and service

service of them ; as also of holy church, and the order of knighthood. And, at day break, one shall call the priest to confess him of all his sins, and, having heard mattines and mass, shall afterwards be commended, if he please.

10. And after his entrance into the chapell, there shall be a taper burning before him ; and so soon as mass is begun, one of the governours shall hold the taper untill the reading of the gospell ; and then shall the governour deliver it into his hands, who shall hold it himself, till the gospel be ended ; but then shall receive it again from him, and set it before him, there to stand during the whole time of mass.

11. And at the elevation of the host, one of the governours shall take the hood from the esquire, and afterwards deliver it to him again, untill the gospell *in principio* ; and at the beginning thereof the governour shall take the same hood again, and cause it to be carried away, and shall give him the taper again into his own hands.

12. And then, having a peny, or more, in readines, near to the candlestick, at the words *verbum caro factum est*, the esquire, kneeling, shall offer the taper and the peny ; that is to say, the taper to the honour of God, and the peny to the honour of the person that makes him a knight. All which being performed, the esquire's governours shall conduct the esquire to his chamber,

ber, and shall lay him again in bed till it be full day light. And when he shall be thus in bed, till the time of his rising, he shall be clothed with a covering of gold, called Singleton, and this shall be lined with blew Cardene. And when the governours shall see it fit time, they shall go to the king, and say to him; *Sir, when doth it please you that our master shall rise?* Whereupon the king shall command the grave knights, esquires, and minstrells, to go to the chamber of the said esquire for to raise him, and to attire and dress him, and to bring him before him into the hall. But, before their entrance, and the noise of the minstrells heard, the esquire's governours shall provide all necessaries ready for the order, to deliver to the knights, for to attire and dress the esquire.

And when the knights are come to the esquire's chamber, they shall enter with leave, and say to him; *Sir, Good-morrow to you, it is time to get up and make yourself ready;* and thereupon they shall take him by the arm to be dressed, the most ancient of the said knights reaching him his shirt, another giving him his breeches, the third his doublet; and another putting upon him a kirtle of red Tartarin, two other shall raise him from the bed, and two other put on his nether stockings, with soles of leather sowed to them; two other shall lace his sleives, and another shall gird him with a girdle of white leather, without any buckles thereon; another shall con be his head; another shall put on his coite; another shall give him his mantle of silk

(over)

(over the bases or kirtle of red Tartarin) tyed with a lace of white silk, with a pair of white gloves hanging at the end of the lace. And the chandler shall take for his fees all the garments, with the whole array and necessaries wherewith the esquire shall be apparelled and cloathed on the day that he comes into the court to receive the order; as also the bed wherein he first lay after his bathing, together with the singleton and other necessaries; in consideration of which fees, the same chandler shall find, at his proper cost, the said coife, the gloves, the girdle, and the lace.

13. And when all this is done, the grave knights shall get on horseback, and conduct the esquire to the hall, the minstrells going before making musick: But the horse must be accoutréed as followeth: The saddle having a cover of black leather, the bow of the saddle being of white wood quartered. The stirrup-leathers black, the stirrups gilt; the paitrell of black leather gilt, with a croſs pate gilt, hanging before the breast of the horse, but without any crooper: The bridle black, with long notched rams, after the Spanish fashion, and a croſs paté on the front. And there must be provided a young esquire, courteous, who shall ride before the esquire, bareheaded, and carry the esquire's ſword, with the ſpurs hanging at the handle of the ſword; and the ſcabbard of the ſword shall be of white leather, and the girdle of white leather, without buckles. And the youth shall hold the

the fword by the point, and after this manner must they ride to the king's hall, the governours being ready at hand.

14 And the grave knights shall conduct the said esquire; and so soon as they come before the hall dore, the marshalls and huishers are to be ready to meet him, and desire him to alight; and being alighted, the marshall shall take the horse for his fee, or else c s. Then shall the knights conduct him into the hall, up to the high table, and afterwards up to the end of the second table, until the king's coming, the knights standing on each side of him, and the youth holding the fword upright before him, between the two governours.

15. And when the king is come into the hall, and beholdeth the esquire ready to receive this high order and temporal dignitie, he shall aske for the fword and spurs, which the chamberlain shall take from the youth, and shew to the king; and thereupon the king, taking the right spur, shall deliver it to the most noble and gentile person there, and shall say to him, *Put this upon the esquire's heel*; and he kneeling on one knee, must take the esquire by the right leg, and, putting his foot on his own knee, is to fasten the spur upon the right heel of the esquire; and then making a crois upon the esquire's knee, shall kis him; which being done, another knight must come and put on his left spur in the like manner. And then shall the king, of his great favour, take the fword and gird the esquire therewith;

therewith; whereupon the esquire is to lift up his arms, holding his hands together, and the gloves betwixt his thumbs and fingers.

16. And the king, putting his own armes about the esquire's neck, shall say, *Be thou a good knight*, and afterwards kiss him. Then are the antient knights to conduct this new knight to the chapell, with much musick, even to the high altar, and there he shall kneel, and, putting his right hand upon the altar, is to promise to maintain the rights of the holy church, during his whole life.

17. And then he shall ungirt himself of his fword, and, with great devotion to God and holy church, offer it there; praying unto God and all his saints, that he may keep that order, which he hath so taken, even to the end: All which being accomplished, he is to take a draught of wine.

18. And, at his going out of the chapell, the king's master-cook being ready to take off his spurs, for his own fee, shall say, *I the king's master-cook am come to receive your spurs for my fee; and if you do any thing contrary to the order of knighthood, (which God forbid), I shall kick your spurs from your heels.*

19. After this the knights must conduct him again into the hali, where he shall sit the first at the knight's table, and the
knights

knights about him, himself to be served as the others are; but he must neither eat nor drink at the table, nor spit, nor look about him, upwards or downwards, more than a bride. And this being done, one of his governours having a handkerchief in his hand, shall hold it before his face when he is to spit. And when the king is risen from the table, and gone into his chamber, then shall the new knight be conducted, with great store of knights, and minstrells proceeding before him, into his own chamber; and at his entrance, the knights and minstrells shall take leave of him, and go to dinner.

20. And the knights being thus gone, the chamber dore shall be fastened, and the new knight disrobed of his attire, which is to be given to the kings of armes, in case they be there present; and if not, then to the other heralds, if they be there; otherwise, to the minstrells, together with a mark of silver, if he be a knight bacheler; if a baron, double to that; if an earl, or of a superior rank, double thereto. And the ruslet night-cap must be given to the watch, or else a noble.

Then is he to be cloathed again with a blew robe, the sleives whereof to be streight, shaped after the fashion of a priest's; and upon his left shoulder to have a lace of white silk hanging: And he shall wear that lace upon all his garments, from that day forwards, untill he have gained some honour and renown by arms, and is registred of as high record as the nobles, knights, esquires,

esquires, and heralds of arms ; and be renowned for some feats of arms as aforesaid ; or, that some great prince, or most noble ladie, can cut that lace from his shoulder, saying, *Sir ! we have heard so much of the true renown concerning your honour, which you have done in divers parts, to the great fame of Chivalrie, as to yourself, and of him that made you a knight, that it is meet this lace be taken from you.*

21. After dinner, the knights of honour and gentlemen, must come to the knight, and conduct him into the presence of the king, the esquire's governors going before him, where he is to say, *Right noble and renowned Sir ! I do in all that I can give you thanks for these honours, curtesies, and bountie, which you have vouchsafed to me.* And having so said, shall take his leave of the king.

22. Then are the esquire's governors to take leave of this their master, saying, *Sir ! we have, according to the king's command, and as we were obliged, done what we can ; but if through negligence we have in aught displeased you, or by any thing we have done amiss at this time, we desire pardon of you for it. And, on the other side, Sir, as right is, according to the customs of the court, and antient kingdoms, we do require our robes and fees, as the king's esquires, companions to batchelors and other lords.*

C O R R E C T I O N S.

Page 163, line sixth from the top, for *was* read *were*.

Page 177, line sixth from the top, for *quem* read *quam*.

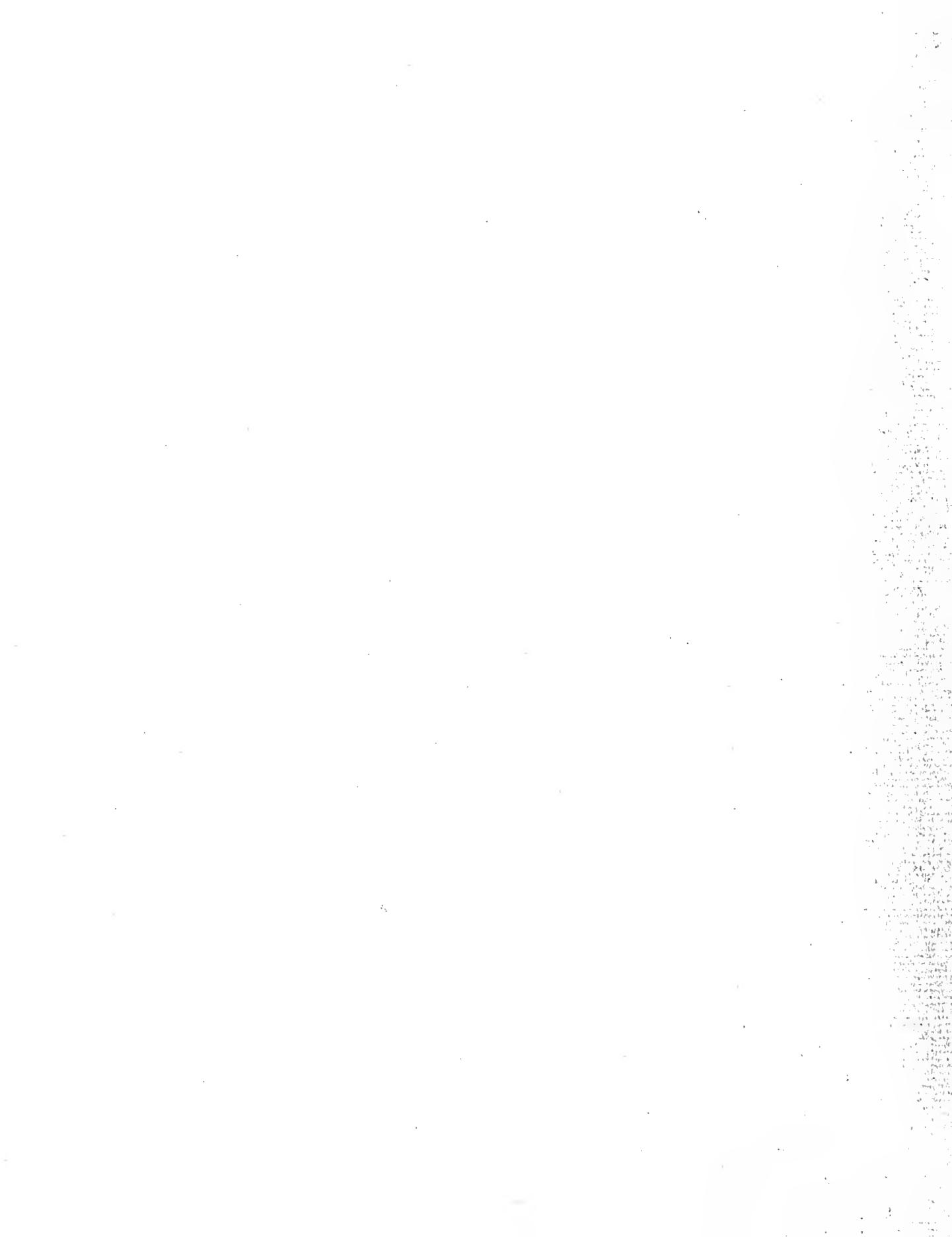
Page 184, line third from the bottom, for *rupta* read *ropta*.

Page 221, line fourth from the top, for *Mr Lombard* read *Mr Lambard*.

Page 230, line fourth from the top, for *flates* read *tribes*.

Page 304, line seventh from the bottom, for *vis* read *bois*.

Page 381, line sixth from the top, for *valuable* read *useful*.





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